

1988

State of Utah v. David R. Warden : Addendum to Brief of Appellant

Utah Court of Appeals

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UTAH COURT OF APPEALS
BRIEF

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IN THE UTAH COURT OF APPEALS

STATE OF UTAH,

Plaintiff and
Respondent,

vs.

Court of Appeals No.

880575-CA

DAVID R. WARDEN,

(Argument Priority - 2)

Defendant and
Appellant,

APPEAL

From a conviction of Negligent Homicide in the
Second Circuit Court, State of Utah, Davis
County, Layton Department, the Honorable K.
Roger Bean, Judge, presiding.

ADDENDUM TO BRIEF OF APPELLANT

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INDEX

<u>ITEM</u>	<u>DESIGNATIONS</u>
Exerpts from Vol. I of Transcript	Tab A
Exerpts from Vol. II of Transcript	Tab B
Exerpts from Vol. III of Transcript	Tab C
Exerpts from Vol. IV of Transcript	Tab D
Exerpts from Vol. V of Transcript	Tab E

Tab A

IN THE FOURTH CIRCUIT COURT
IN AND FOR DAVIS COUNTY, LAYTON DEPARTMENT

-----)	
STATE OF UTAH,	)	CIVIL NO. 871000415
)	
Plaintiff,	)	REPORTER'S TRANSCRIPT,
	)	<u>VOLUME I</u>
vs.)	
	)	FEBRUARY 22, 1988
DAVID WARDEN,)	
	)	REPORTED BY:
Defendant.	)	RENEE L. STACY, CSR, RPR
-----)	

VOLUME I

COPY

BE IT REMEMBERED that commencing on February 22, 1988, through February 26, 1988, the above-entitled matter came on for HEARING in the Fourth Circuit Court in and for Davis County, Layton Department, before the HONORABLE K. ROGER BEAN.

Representing the Plaintiff: MELVIN C. WILSON
BRIAN NAMBA

Representing the Defendant: DARWIN C. HANSEN

* * * *

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I N D E X

Opening Statements

By Mr. Wilson	6
By Mr. Hansen	18

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Witness

Ivy Young

Direct Examination by Mr. Wilson	42
--	----

1 your first witness.

2 MR. WILSON: Thank you, your Honor. We
3 would call Ivy Young to the stand at this time.

4 THE COURT: We can go off the record for
5 a moment.

6 (Time lapse.)

7 THE COURT: We'll go back on the record.

8 MR. WILSON: Ivy, would you be sworn,
9 please.

10 IVY YOUNG

11 called as a witness and sworn, was examined and
12 testified as follows:

13 DIRECT EXAMINATION

14 BY MR. WILSON:

15 Q Ivy, I think I'm going to remain seated,
16 if you don't mind. Would you state your full name
17 for the record, please.

18 A Ivy Florence Young.

19 Q Where do you currently reside, Ivy?

20 A 244 South 600 East, Kaysville.

21 Q How long have you resided at the
22 Kaysville address?

23 A Almost two years.

24 Q Are you a citizen of the United States?

25 A No.

1 Q How long have you been in the United
2 States?
3 A Since 1985.
4 Q Prior to living in the United States,
5 where did you live?
6 A In England.
7 Q How long were you in England for?
8 A Since birth.
9 Q All your life?
10 A Yeah.
11 Q Now, Ivy, you have a family, do you not?
12 A Yes.
13 Q How many children do you have?
14 A Seven children.
15 Q And can you give us sort of the range of
16 ages here that we're talking about?
17 A My oldest is 31 and my baby is 6 years
18 old.
19 Q You have a daughter named Joanne; is that
20 correct?
21 A Yes.
22 Q Where does she fit in this sequence of
23 children?
24 A She is fifth.
25 Q She's the fifth child?

1 A Fifth child.

2 Q Is Joanne living with you at home in
3 Kaysville?

4 A Yes.

5 Q Has she been living with you at home in
6 Kaysville?

7 A Yes.

8 Q Now, it's true, is it not, that Joanne
9 came to this country before you and your husband
10 came?

11 A Yes. She came in 1984.

12 Q Did you come over for a visit prior to
13 coming to this country?

14 A Yes. In 1984 we came to visit.

15 Q Since you came back to this country,
16 you've always lived in the Kaysville area?

17 A Yes.

18 Q Now, I just want to briefly go through
19 your history in England. Were any of your children
20 born in England?

21 A Yes.

22 Q How many of your seven children?

23 A All seven were born in England.

24 Q Were any of those children delivered by
25 home delivery at home?

1 A Yes. Four of them were.

2 Q Four out of the seven?

3 A Yes.

4 Q Did you experience any difficulties
5 relative to those home deliveries?

6 A No, no.

7 Q Were any of those children born
8 premature?

9 A No.

10 Q One other question relative to your
11 children. Have any of those children, other than
12 Joanne, ever had a home delivery?

13 A No.

14 Q All of your grandchildren have been born
15 in a hospital situation?

16 A Yes.

17 Q Have any of those children been born
18 premature?

19 A Just this grandchild, born at 28 weeks.

20 Q At 28 weeks?

21 A Yes.

22 Q Where was she born?

23 A In a hospital in England.

24 Q When did you first see that child?

25 A He was five days old when I saw him.

1 A I think he was in his office, but he was
2 in Kaysville. I think it was in his office.

3 Q It was in Kaysville?

4 A Yes.

5 Q Did you have a conversation with him at
6 that point?

7 A I told him that the bleeding had eased a
8 little but the contractions were still about 20
9 minutes apart. And I asked him if he wanted to
10 check Joanne and he said not to bring her out
11 because it was snowing very hard, and he said not to
12 bring her out and to call again.

13 Q Did he tell you when to call?

14 A I can't remember whether it was this
15 conversation but at one time he said to call when
16 the contractions got to three minutes.

17 Q During that day did you have more than
18 two conversations with Dr. Warden?

19 A Yes. At 4 o'clock Joanne had started to
20 lose clots of blood and I was very worried about it
21 and I called Dr. Warden.

22 Q Going from the 1 o'clock conversation to
23 the 4 o'clock conversation, did you have an
24 opportunity during that time period to see the bed
25 sheets or clothing or anything of that sort?

1 A No. Joanne was wearing sanitary napkins
2 and so it just came on there.

3 Q Joanne advised you of something?

4 A She advised she was losing clots of
5 blood.

6 Q Did you talk to Dr. Warden at that time?

7 A Yes.

8 Q Where did you reach him at that time?

9 A In his office again, I believe.

10 Q What did you tell Dr. Warden again? If
11 you can be as specific as possible.

12 A I told him that Joanne was losing clots
13 and that I was concerned and he said not to worry,
14 it was just labor, and then -- I think it was then
15 he told me to call back when the contractions got to
16 three minutes and I expressed again my concern for
17 the clots and he told me to stop fussing, Mother, I
18 think was his words.

19 Q To stop fussing, Mother?

20 A Yes.

21 Q Was that the extent of the conversation?

22 A More or less, yes. It wasn't a very long
23 conversation.

24 Q Did you relate that conversation to
25 Joanne?

1 A Yes.

2 Q When was the next time, if ever, that you
3 talked to Dr. Warden on that particular date?

4 A I called him, I think it was about 10:15
5 in the evening.

6 Q And why did you call him at 10:15?

7 A Because Joanne's contractions were more
8 or less continuous and she was in the last stages of
9 labor.

10 Q Had you made any preparations during this
11 time period for the birth of that child?

12 A Yes. We'd got the room ready and got a
13 cradle out for the baby.

14 Q When you say the room, what room are we
15 talking about?

16 A Joanne's bedroom.

17 Q Was it Joanne's bedroom?

18 A Yes.

19 Q Was it Joanne's bedroom at that time?

20 A Well, no. It was a sister's. Joanne had
21 slept there, but we made a room downstairs in
22 preparation for Joanne and the baby, but the
23 delivery was upstairs.

24 Q And what preparations specifically had
25 you made?

1 A Clean bedding and clothes out for the
2 baby and warming the bed for the baby.

3 Q This bedroom, is there a bathroom that
4 accompanies the bedroom?

5 A Just beside the bedroom.

6 Q Now, did Joanne lay down at that time
7 when you called Dr. Warden or what?

8 A She was too far advanced in labor to lay
9 down. She was easier sort of just walking around.

10 Q It was easier for her to walk around than
11 it was for her to lay down at that point?

12 A Yes.

13 Q I see. When did Dr. Warden arrive after
14 you called him?

15 A It was just about 10:30.

16 Q So he responded within about 10, 15
17 minutes?

18 A Yes.

19 Q Upon arrival who was in the home at that
20 time?

21 A Myself and my husband and John Shaw and
22 Joanne.

23 Q Now, can you tell me or do you have any
24 recollection as to what rooms in the house they were
25 in at the time Dr. Warden arrived?

1 A In the front room.

2 Q Who was present?

3 A Just Dr. Warden and I.

4 Q Just the two of you?

5 A Yes.

6 Q How long did the conversation go for?

7 A Oh, just minutes. It's just as we walked
8 across the room, more or less.

9 Q And I want you to be again as specific as
10 possible, Ivy. What do you recall that you said to
11 Dr. Warden while you were having this conversation
12 as he was leaving the home?

13 A Well, I just thanked him for coming, I
14 think.

15 Q And did he say anything to you at that
16 time?

17 A He told me to watch the baby through the
18 night.

19 Q He said watch the baby through the night?

20 A (Witness nods.)

21 Q Anything else?

22 A No. He didn't tell me what to watch for.
23 He just said to watch the baby.

24 Q Did he say anything to you if any problem
25 arose or anything of this sort?

1 A No.

2 Q Didn't say, "Call me if there's a
3 problem."?

4 A No.

5 Q Did he say anything to you about when he
6 would check back?

7 A No.

8 Q Did he ever indicate to you anything
9 relative to instructions for the care of that baby?

10 A No. Just all he said was watch the baby
11 through the night.

12 Q Do you recall any reference by Dr. Warden
13 subsequent to the birth about the child being two
14 weeks premature? Were you present when he said
15 anything further about the prematurity of this child?

16 A No.

17 Q Okay. Ivy, after Dr. Warden left, which,
18 as I understand it, was about 20 after 11:00 --

19 A Uh-huh.

20 Q -- what did you do then?

21 A I went back into the room and the bedroom
22 was rather cold and so my son's bedroom was just
23 beside it and he was staying at a friend's for the
24 night and so we shifted Joanne and the baby into the
25 other room because it was warmer.

1 Q What room was that?

2 A It was a bedroom right beside the room

3 that Joanne had delivered the baby in.

4 Q And it was a warmer room in the house?

5 A Yes.

6 Q Where was the baby placed at this time?

7 A The baby was in a crib.

8 Q In a little crib?

9 A Yes.

10 Q Was it a regular sized crib?

11 A A baby sized. A little rocking crib.

12 Q Was it positioned anywhere specifically

13 in that room?

14 A Beside Joanne's bed.

15 Q Where's the heater located in the room?

16 A It was just probably about three or four

17 feet away from the baby, I guess.

18 Q And relative to the condition of the baby

19 at that time, again, first of all, can you describe

20 the color?

21 A More or less remained the same color, the

22 face did.

23 Q Did you unclothe the baby at all at that

24 time period?

25 A Not at that time. I did through the

1 night.

2 Q All right. Now, at that time did you
3 note the breathing?

4 A It still stayed the same. It was the
5 same noise and then the baby would quit the noise
6 and kind of rest for awhile.

7 Q So what you heard was a grunting sound
8 and then it seemed like it would rest for awhile?

9 A Yes.

10 Q Could you detect in those rest periods
11 whether or not the baby was breathing?

12 A He seemed to be. It was just kind of a
13 very short period. Each time I checked that he was
14 okay and I turned him to the other side and then
15 he'd start grunting again.

16 Q How often would he make this grunting
17 sound?

18 A He was just making the grunting sound all
19 the time.

20 Q Constantly?

21 A Yeah.

22 Q Did you remain up with the baby at that
23 time?

24 A Yeah. I went into my bedroom
25 occasionally just to sit and rest, but I was in and

1 out of the room.

2 Q So you were in and out of the room. When
3 you were in the room with the baby would you sit
4 there or --

5 A Yeah, I was just sitting there.

6 Q On the bed or what?

7 A Yeah. On the end of Joanne's bed.

8 Q Close to the baby?

9 A Yes.

10 Q Did you ever have occasion to check the
11 baby during this time?

12 A Yes, because I tried to feed some liquid
13 to the baby but he couldn't take it.

14 Q When did you try to feed some liquid to
15 the baby?

16 A I can't remember the time. It was
17 sometime through the night.

18 THE COURT: Excuse me. Can the jury hear
19 all right with the airplane?

20 UNIDENTIFIED SPEAKER: I couldn't hear
21 the last question.

22 (Question read back by the reporter.)

23 Q (By Mr. Wilson) When did you try and
24 feed the baby?

25 A I can't remember what time it was through

1 the night.

2 Q Now, did you have occasion to unclothe
3 the baby?

4 A Yes.

5 Q Now, the first occasion that you
6 unclothed the baby was approximately when?

7 A I can't remember times.

8 Q Was it during the nighttime?

9 A Yes, it was during the nighttime.

10 Q Was Joanne awake at that time?

11 A Yes.

12 Q How did you unclothe the baby?

13 A I unwrapped his blanket.

14 Q Was there a reason why you unwrapped the
15 baby at that time?

16 A Just to see if his diaper was wet and to
17 see if he was okay.

18 Q What did you observe, if anything, about
19 the baby when you unwrapped him?

20 A We observed that his hands and feet were
21 very blue.

22 Q They were very blue?

23 A (Witness nods.)

24 Q Did that concern you at that time?

25 A Yes.

1 Q Why did that concern you?

2 A It wasn't a normal baby color.

3 Q What did you do?

4 A We wrapped the baby up again. We had the
5 little booties on and we wrapped him up and put
6 another receiving blanket on.

7 Q During the time period that you unwrapped
8 the baby, did you note any change relative to the
9 breathing?

10 A No. The breathing stayed the same more
11 or less through the night, the same pattern.

12 Q So you wrapped the baby up, you put
13 another receiving blanket on it. Did you make any
14 other efforts at that point to warm the baby?

15 A No. Just put him back in his crib and
16 put the blankets back on him.

17 Q Again, did you have a second occasion to
18 unclothe that baby during the night?

19 A Yes.

20 Q When was that?

21 A I don't remember.

22 Q Was it within an hour?

23 A I think it was about 4 o'clock. I can't
24 be sure.

25 Q In the morning?

1 A Yeah.

2 Q Again was Joanne awake at that time?

3 A Yes, Joanne was awake.

4 Q And when you unwrapped the baby at that

5 time, did you note any change?

6 A No. It was just still blue in the hands

7 and feet.

8 Q Was it worse than what it was before?

9 A Not that I recall.

10 Q So what did you do at that point?

11 A We turned the baby again. We just kept,

12 you know, wrapping him and turning him, and put him

13 back in his crib.

14 Q Did you make any further efforts, other

15 than wrapping him, to keep the baby warm?

16 A No.

17 Q Did you leave him in the crib at that

18 point?

19 A Yes.

20 Q Did there come a time when the baby was

21 held by his mother?

22 A Yes.

23 Q How long after that second occasion was

24 that?

25 A About 5 o'clock in the morning Joanne got

1 out of the bed and we sat on the couch in the front
2 room and she held the baby then and we sat talking.

3 Q How was the baby wrapped at that point?

4 A In like two receiving blankets and then a
5 quilt around it.

6 Q So there was a quilt around the baby?

7 A Yes.

8 Q And Joanne?

9 A Yeah, Joanne.

10 Q What did you do at that point?

11 A We just sat talking.

12 Q Did you watch TV or anything of that
13 sort?

14 A Yes, TV was on. And then I did some
15 house work.

16 Q Did you continue to check on the baby,
17 Ivy?

18 A Oh, Joanne was holding him all the time.

19 Q During that time, did there ever come a
20 time that you went to sleep?

21 A No, not that I recall sleeping, no.

22 Q So you were in and out and back and forth
23 checking on the baby?

24 A Yes.

25 Q How long did Joanne stay up with the baby

1 watching TV in that manner?

2 A She just stayed on the couch then for
3 quite some time.

4 Q What was the next thing that you recall
5 of any significance relative to the baby?

6 A About 8 o'clock in the morning the baby
7 stopped the noise again but it was a longer period
8 this time and he went very still. Before the period
9 of silence had just been very short but this was a
10 longer period and he just went very still.

11 Q Can you describe the length of the period
12 that it was stopped?

13 A No. I mean, it seemed forever at the
14 time but I really can't.

15 Q Where was the baby at the time that you
16 noticed it?

17 A In the front room, still on the couch.

18 Q Was the baby being held by anybody?

19 A Joanne. And then I took the baby from
20 Joanne.

21 Q So you noticed a longer time period
22 between time that you would hear this grunting
23 sound?

24 A Yeah.

25 Q That concerned you at that point?

1 A Yes.

2 Q What did you do as a result of it?

3 A The baby seemed to -- it stopped
4 breathing again. I telephoned Dr. Warden.

5 Q Did you do anything when you heard that
6 -- or I should say heard the lack of that sound, did
7 you do anything in response to that at that point?

8 A No. I just took the baby and, you know,
9 just kind of rocked it up and down in my arms.

10 Q You didn't attempt to administer any kind
11 of resuscitation or anything of that sort?

12 A No.

13 Q Have you ever had any medical training in
14 that respect?

15 A No. I have taken lessons since, but I
16 hadn't had any previous.

17 Q And so you took the baby and then the
18 baby resumed making this sound?

19 A Yes.

20 Q And so what did you do at that point?

21 A I called Dr. Warden's office.

22 Q Did you talk to anybody at Dr. Warden's
23 office?

24 A His nurse.

25 Q Do you remember the name of the nurse

1 that you talked to?

2 A No, I can't remember.

3 Q Was Dr. Warden in at that time?

4 A No. She said he was at home.

5 THE COURT: Excuse me. He was where?

6 THE WITNESS: At home. Sorry.

7 Q (By Mr. Wilson) What did you do then?

8 A I called home and --

9 Q Do you know who you spoke to at home?

10 A I think it was Mrs. Warden and she said
11 that the doctor was out making his way to his
12 office.

13 Q Ivy, I need to go back for just a minute
14 to that first phone call to the office. When you
15 called the office -- I don't want you to testify as
16 to anything the nurse said to you. What I want to
17 know is did you say anything to the nurse on that
18 occasion about what was going on with the baby?

19 A No.

20 Q You just asked for Dr. Warden?

21 A Yes.

22 Q Did the nurse ask you any questions
23 relative to why you were calling?

24 A No.

25 Q Now, then you called his home?

1 A (Witness nods.)
2 Q And talked to his wife?
3 A (Witness nods.)
4 Q What time of day was this when you --
5 A Well, it was soon after I'd called the
6 office.
7 Q Did you do anything during the interim
8 between the call to the office and the call to his
9 home?
10 A Not that I can remember.
11 Q Where was the baby at this time?
12 A Joanne was still holding the baby.
13 Q On the couch?
14 A Yes.
15 Q Now, when you called the home of Dr.
16 Warden, you say you spoke to his wife?
17 A I think it was Mrs. Warden.
18 Q Again, did you say anything to her at
19 that time, not what she said to you, but what you
20 said to her, about the baby having any problems?
21 A No. I just asked for Dr. Warden and she
22 said he was out.
23 Q He was out?
24 A Uh-huh.
25 Q What efforts did you make to get a hold

Tab B

IN THE FOURTH CIRCUIT COURT
IN AND FOR DAVIS COUNTY, LAYTON DEPARTMENT

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STATE OF UTAH, .)	CIVIL NO. 871000415
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Plaintiff,)	REPORTER'S TRANSCRIPT,
)	<u>VOLUME II</u>
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)	FEBRUARY 23, 1988
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)	REPORTED BY:
Defendant.)	RENEE L. STACY, CSR, RPR
-----)	

VOLUME II

COPY

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BRIAN NAMBA

Representing the Defendant: DARWIN C. HANSEN

* * * *

I N D E X

Witness

Ivy Young

Cross Examination by Mr. Hansen	4
Redirect Examination by Mr. Wilson	88
Recross Examination by Mr. Hansen	98
Re-redirect Examination by Mr. Wilson	101
Re-recross Examination by Mr. Hansen	101
Re-redirect Examination (Cont.) by Mr. Wilson	102
Re-recross Examination (Cont.) by Mr. Hansen	103

Sharon Johnson

Direct Examination by Mr. Wilson	104
Cross Examination by Mr. Hansen	123
Redirect Examination by Mr. Wilson	133
Recross Examination by Mr. Hansen	134

Maurice Young

Direct Examination by Mr. Wilson	135
Cross Examination by Mr. Hansen	146
Redirect Examination by Mr. Wilson	169

Dr. Mark Bitner

Direct Examination by Mr. Namba	172
Cross Examination by Mr. Hansen	210
Redirect Examination by Mr. Namba	244
Recross Examination by Mr. Hansen	253

Dr. Frank Kramer

Direct Examination by Mr. Namba	260
Voir Dire Examination by Mr. Hansen	270
Direct Examination (Cont.) by Mr. Namba	273
Cross Examination by Mr. Hansen	282
Redirect Examination by Mr. Namba	304
Recross Examination by Mr. Hansen	312

John Shaw

Direct Examination by Mr. Wilson	321
Cross Examination by Mr. Hansen	338
Redirect Examination by Mr. Wilson	346

1 morning then I take it you just went to bed?

2 A Yes.

3 Q Joanne was in bed?

4 A Yes.

5 Q You didn't speak with her?

6 A No.

7 Q The next morning I think you got up about
8 8 o'clock?

9 A No. I was up earlier than 8 o'clock.

10 Q But it was 8 o'clock when you talked to
11 Joanne and she told you about this spotting?

12 A Yes.

13 Q All right. Now, at that time, this is
14 the 7th of November, essentially a month early,
15 correct?

16 A Uh-huh.

17 Q You need to answer out loud so the court
18 reporter can take down what we say.

19 A Yes. Sorry. Yes.

20 Q You were concerned about the fact that
21 this baby might be coming a month early, weren't
22 you?

23 A Yes.

24 Q And then I understand John Shaw came
25 over.

1 A Yes.

2 Q John and Joanne talked about really when
3 conception might have occurred?

4 A Yes.

5 Q And if conception occurred in March, then
6 the due date would be in December, right?

7 A Yes.

8 Q John and Joanne, however, in talking,
9 indicated that maybe conception occurred a month
10 earlier, in February, correct?

11 A That was John's opinion, not Joanne's.

12 Q But John said probably a month early?

13 A Uh-huh.

14 Q Therefore, you called and reported that
15 to the doctor and told him that conception may be a
16 month early, correct?

17 A Yes.

18 Q And if conception were in February and
19 you told the doctor that that's when it was, then
20 Joanne's delivery date would be full term, wouldn't
21 it?

22 A It could have been, yes.

23 Q And that's what you expected it was after
24 you learned from John that conception was a month
25 early?

1 A No, that's not what I expected. Joanne
2 and I still felt that it was a December date. It
3 was John that was confused with the time of
4 conception.

5 Q You told the doctor, however, that John
6 felt it was a month early?

7 A Yes.

8 Q And you and the doctor thought, under
9 those circumstances, Joanne may be in real labor,
10 correct?

11 A Yes.

12 Q And therefore on that day, after John
13 talked to you, you felt somewhat satisfied that this
14 baby was not early?

15 A I wouldn't say satisfied, no. There was
16 a possibility, but I wouldn't say I felt satisfied.

17 Q Well, after talking with the doctor, you
18 and he talked about the fact that labor was probably
19 appropriate because this baby was probably full
20 term?

21 A Yes.

22 Q Okay. Now, with respect to the bleeding
23 that occurred on Friday, November the 4th, I
24 understand your testimony was that you didn't check
25 the sanitary pad that Joanne was using?

1 A No.

2 Q You didn't check the bedding?

3 A No. There was nothing on the bedding.

4 Q And you didn't check her nightgown or

5 anything like that?

6 A No.

7 Q Frankly, you didn't check anything to see

8 the amount of the bleeding, did you?

9 A Not check it, no. I asked her the amount

10 of the bleeding.

11 Q And she told you and you accepted that?

12 A Yes.

13 Q And reported to the doctor what you

14 testified you reported?

15 A Yes.

16 Q Now, I think you indicated that after you

17 called and discussed this with the doctor that he

18 told you that Joanne should stay down and stay

19 quiet?

20 A Yes.

21 Q Isn't it a fact that Joanne got up later

22 in the afternoon and went to the drug store with

23 John?

24 A Yes, she did, after the --

25 Q And you didn't want her to?

1 A Yes.

2 Q You told them not to go?

3 A Well, I said it would be better that she
4 didn't go.

5 Q But Joanne went anyway?

6 A Yes.

7 Q Now, you made a comment that in the
8 afternoon when you called the doctor that Joanne was
9 passing clots of blood. You didn't check those,
10 either, did you?

11 A No.

12 Q Are you aware of what is known as the
13 mucous plug in connection with labor?

14 A Yes.

15 Q As I understand it, the mucous plug is a
16 tissue that is in the cervix and it, in effect,
17 protects foreign bodies, bacteria and that sort of
18 thing, from entering the birth canal, going up the
19 canal of the cervix and entering the uterus or the
20 womb of the mother and therefore it protects against
21 infection. Is that your understanding?

22 A Yes.

23 Q And are you aware of the fact, and I
24 assume you are, that during the course of labor, as
25 the cervix opens, the body just naturally expels the

1 Q You knew then that if you did bathe the
2 baby it could have the effect of reducing the baby's
3 body temperature?
4 A I didn't know that, but I wouldn't have
5 bathed it anyway.
6 Q Well why wouldn't you have? You would
7 have not bathed it for a reason?
8 A Because I was familiar with the baby not
9 being bathed immediately.
10 Q And I take it the reason the baby isn't
11 bathed immediately is to maintain its temperature,
12 correct?
13 A I guess so. I don't know that.
14 Q At least you knew that if the baby loses
15 body temperature that's a serious thing?
16 A Yes.
17 Q You recognize that as a mother?
18 A Yes.
19 Q Especially in a newborn?
20 A Yes.
21 Q Therefore, you wiped the baby off with
22 the towel and then dressed the baby?
23 A Yes.
24 Q And the doctor asked you to do that?
25 A Yes.

1 Q Okay. Now, you also indicated that the
2 doctor was giving Joanne instructions as to how to
3 nurse the baby?

4 A Yes.

5 Q Joanne, I think, didn't want to nurse the
6 baby, did she?

7 A No.

8 Q But the doctor thought it was best and
9 tried to encourage Joanne to nurse the baby, didn't
10 he?

11 A I don't recall that he encouraged Joanne.
12 He was speaking about the benefits of nursing.

13 Q The benefits being that the baby is
14 healthier, the baby is more immune to disease and
15 the mother's milk helps nourish the baby more than
16 the artificial milk?

17 A I can't recall the conversation exactly.

18 Q But you knew that to be the case?

19 A Yes.

20 Q You nursed your children?

21 A No. I couldn't.

22 Q You didn't nurse any of them?

23 A Just my first one. I was unable to nurse
24 the others.

25 Q In any event, you saw the doctor giving

1 Joanne instructions on nursing?

2 A Yes.

3 Q Did you hear all of those instructions?

4 A No. It wasn't instructions as much as a
5 discussion about breastfeeding.

6 Q And then when you came in and saw the
7 doctor holding the baby in his arms and he was
8 turning it toward himself, you don't know whether he
9 was giving instructions about the positioning of the
10 baby relative to this breathing that you've
11 described --

12 A No.

13 Q -- as grunting, do you?

14 A No.

15 Q If the doctor were to say that were the
16 case, you'd have no reason of saying that's not so,
17 would you?

18 A No.

19 Q All right. Now, the doctor, I think you
20 indicated, Ivy -- pardon me. Mrs. Young. The
21 doctor asked you to watch the baby during the night?

22 A Yes.

23 Q Now, when you went in to see the doctor
24 in his office in September and October before this
25 baby is born, the doctor inquired of you and Joanne

1 about your own experience with children and caring
2 for children, didn't he?

3 A I can't recall.

4 Q He asked you how many children you had,
5 didn't he?

6 A Yes, I think he did.

7 Q And he asked you if you'd had them at
8 home?

9 A Yes.

10 Q And you told him you had, correct?

11 A Yes.

12 Q Is that true?

13 A Yes.

14 Q And during this discussion, you
15 understood the doctor to be inquiring to see whether
16 there would be sufficient support for the care of
17 the baby after the birth at home as opposed to in
18 the hospital, right?

19 A No. I didn't -- I didn't get that
20 impression at all, no, not from the discussion.

21 Q Now, Mrs. Young, I suppose the main
22 difference between a hospital birth and a home birth
23 is that in the hospital after the baby is born, it's
24 taken into the nursery and the nurses watch the
25 baby?

1 A Yes.

2 Q For the three children that you had in
3 the hospital that's the way it worked, isn't it?

4 A Yes.

5 Q Whereas, if you have a birth at home,
6 then the child is left with the family at home to be
7 looked after as opposed to the nurses in the nursery
8 at the hospital, correct?

9 A Yes. After immediate attention.

10 Q And so you understood that after the
11 doctor left your home that he was relying upon you
12 to watch little Jareth?

13 A Yes.

14 Q And you understood that if there was
15 anything that went wrong with the baby that you were
16 to get in touch with the doctor?

17 A Yes.

18 Q And you knew how to call him?

19 A Yes.

20 Q At his office?

21 A Uh-huh.

22 Q And if he weren't at the office he could
23 be reached on his mobile phone?

24 A Well, I didn't realize that, but yes, I
25 tried his home.

1 Q Well, you had done that at the stadium
2 the day before, correct?

3 A Yes, but I didn't know how it was done.
4 I just know that I spoke to him.

5 Q But you knew that he was always
6 available?

7 A Yes.

8 Q And also you had his home phone and could
9 reach him at home?

10 A Yes.

11 Q All right. Now, Mrs. Young, in addition,
12 while you were in England and lived there before you
13 came to the United States -- England has hospitals
14 just like the United States, doesn't it?

15 A Yes.

16 Q England has ambulances just like the
17 United States?

18 A Yes.

19 Q England has emergency departments at the
20 hospital just like the United States?

21 A Yes.

22 Q As a matter of fact, in England if you
23 have an emergency you could take the child directly
24 to the emergency department of the hospital,
25 couldn't you?

1 A You can do, but usually you have a
2 doctor's decision. Usually.

3 Q Well, if it's a real emergency and there
4 isn't time, you can take the child to the hospital,
5 can't you?

6 A Yes.

7 Q Or if you wish you can call an ambulance,
8 can't you?

9 A Yes. But again, you have to have a
10 doctor's permission to call an ambulance.

11 Q All right. Now, you'd been in America
12 since 1985?

13 A Yes.

14 Q Less than a year, but you'd been here
15 awhile?

16 A Yes.

17 Q You had been to see Dr. Bitner whom I
18 believe is a member of the Tanner Clinic, correct?

19 A Yes.

20 Q And the Tanner Clinic is located right
21 next to the Humana North Hospital in Layton,
22 correct?

23 A Yes.

24 Q So you knew where the Humana Hospital
25 North was, didn't you?

1 A Yes.

2 Q You knew it had an emergency department?

3 A Yes.

4 Q And you knew that there were paramedics
5 and ambulance services in Davis County, didn't you?

6 Q Yes. All right. Now, you then were left
7 to watch over and you were left in charge of the
8 baby that night?

9 A Yes.

10 Q Knowing that if anything went wrong you
11 could call the doctor?

12 A Yes.

13 Q Or you could call an ambulance?

14 A Yes, I guess I --

15 Q Or you could take the baby to the
16 emergency at the hospital, couldn't you?

17 A Uh-huh.

18 Q Those options were available to you,
19 correct?

20 A Yes.

21 Q Now, Mrs. Young, during the time when you
22 and the doctor were there at your home, isn't it a
23 fact that due to the hypospadias that he told you
24 about and due to this breathing condition that
25 you've described as grunting, that he indicated to

1 you that it may be that this baby should be
2 hospitalized?

3 A Never. He never once mentioned
4 hospitalization at all.

5 Q You deny that?

6 A I deny that.

7 Q You say there was no discussion about
8 that at all?

9 A No discussion at all. That is why we
10 kept on asking him if the baby needed to be checked
11 and have attention.

12 Q You thought maybe the baby then should be
13 in the hospital?

14 A Yes. And that's why we questioned the
15 doctor and he assured us it doesn't and that's why
16 we left it as it was. We trusted in the doctor.

17 Q Now, wait a minute. Did you ask if the
18 baby should be in the hospital and the doctor says,
19 "No, I don't think it needs to be."?

20 A No. We said, "Does the baby need to be
21 checked or need other attention?"

22 Q Who's we?

23 A I asked. I believe Sharon asked and my
24 husband asked, too.

25 Q Now, in terms of -- you just asked if the

1 baby needs checking. The doctor said, "No.

2 Grandma, you watch the baby."?

3 A Yes.

4 Q All right. You felt maybe the baby ought
5 to be in the hospital but you didn't ask the doctor
6 that?

7 A I don't say I felt the baby should have
8 been in the hospital. I was concerned and I asked
9 the doctor and he assured me that no, the baby was
10 okay.

11 Q You didn't talk about hospitalization of
12 the baby?

13 A No.

14 Q You deny there was any discussion about
15 hospitalization?

16 A Yes. Hospitalization wasn't mentioned at
17 all.

18 Q Now, when the doctor indicated to you,
19 "Now, Ivy, you watch the baby during the night," he
20 also indicated to you that if anything went wrong
21 you were to call him, didn't he?

22 A No. He never mentioned that at all.

23 Q Surely you understood that if anything
24 went wrong you were to call him?

25 A Yes. Which I did at 8 o'clock the next

1 morning.

2 Q And in terms of things going wrong you
3 understood that that could relate to this breathing
4 condition that you were talking about?

5 A Yes.

6 Q That could relate to the body temperature
7 of the baby because you understood how important it
8 was that the baby's body temperature stay high?

9 A No. I didn't understand it like that.
10 He said to watch the baby and I watched the baby and
11 the baby's condition stayed more or less the same
12 throughout the night.

13 Q What did you watch for, Mrs. Young?

14 A Well, just for a change, and there was no
15 change as such apart from the hands and feet being a
16 little bluer.

17 Q All right. And that happened during the
18 night on two separate occasions?

19 A Yes.

20 Q Did you ever bathe the baby during the
21 night?

22 A No.

23 Q There were two occasions when you
24 unwrapped the baby and looked at the baby and found
25 the baby's extremities were starting to become blue?

1 A Yes.

2 Q That was different than at the time

3 shortly after the time of birth?

4 A Yes.

5 Q And when you unwrapped the baby, you

6 would take off the blanket?

7 A No. We didn't take off the blanket. We

8 just --

9 Q You opened the blanket up?

10 A Yes.

11 Q So you could see the baby?

12 A Yes.

13 Q And the baby had on, I take it, a diaper.

14 A Yes.

15 Q And a little undershirt?

16 A Yes.

17 Q So you could see its hands and its legs

18 and its feet?

19 A Yes.

20 Q And it was getting blue?

21 A Just the hands were getting blue.

22 Q You testified on direct examination the

23 feet were, also.

24 A Yes. I just said the hands and the feet.

25 Q Now, that happened sometime during the

1 middle of the night?

2 A Yes.

3 Q Was that before you changed bedrooms
4 because it was cold in Joanne's bedroom or after?

5 A After.

6 Q So you woke up, you felt Joanne's bedroom
7 was too cold and you moved her into the room next
8 door?

9 A No. I hadn't even been to bed. We
10 changed Joanne before she even settled down for the
11 night. We changed bedrooms.

12 Q Because you felt the bedroom was too
13 cold?

14 A Yes.

15 Q That's where the baby was born?

16 A Yes.

17 Q So you moved into the bedroom next door
18 which was your son's bedroom?

19 A Yes.

20 Q Right next to the bedroom that Joanne
21 gave birth in?

22 A Yes. The room wasn't cold. It's just
23 that it wasn't as warm as the other room.

24 Q Okay. I understand that. At least the
25 room next door was warmer?

1 A Yes.

2 Q And you did that because you wanted to
3 give more temperature to the baby?

4 A Yes.

5 Q Because you recognized the importance of
6 keeping the baby's body temperature high?

7 A No. It wasn't because of that. It was
8 more comfortable for Joanne, too, because Joanne was
9 cold and shivery so it was for both of them. I
10 wouldn't say I shifted the baby because of keeping
11 the body temperature. It was just they were both
12 being warmer and more comfortable.

13 Q You thought it would be best for the baby
14 and Joanne?

15 A Yes.

16 Q You moved them to the next bedroom and
17 then later in the night you checked the baby again
18 and you start seeing the blue hands and feet?

19 A Uh-huh.

20 Q And this is what time, 2:00 or 3:00?

21 A I can't remember.

22 Q In the middle of the night?

23 A Yes.

24 Q And when that occurred, I think you
25 testified on direct examination that you knew that

1 was not normal.

2 A I don't know whether I said that. Baby's
3 hands and feet do get cold and blue. That's why
4 back home I would have put mittens on the baby's
5 hands but we had no mittens.

6 Q When the baby's hands and feet got blue
7 and it's not normal and you didn't have mittens, did
8 you call or try to call Dr. Warden?

9 A No, no.

10 Q Did you make any effort to give him any
11 advice at all --

12 A No.

13 Q -- that there was a change in the baby?

14 A No.

15 Q And that change was that the extremities
16 were going blue?

17 A No.

18 Q Then later in the day, Mrs. Young, or
19 later in the night, I guess, and the early morning,
20 you unwrapped the baby again and found this
21 condition to be the same or worsening, didn't you?

22 A The same. The same.

23 Q And again you recognized it to be
24 abnormal?

25 A I wouldn't say it was abnormal. Babies

1 hands and feet do go blue. I wouldn't say I
2 recognized it as being abnormal. It was the baby's
3 breathing that I was watching.

4 Q The hands and the feet, the color of the
5 hands and the feet were different? They were more
6 blue than shortly after the time of birth, weren't
7 they?

8 A Yes, yes.

9 Q And you were watching the baby for a
10 change from the time of birth throughout the night?

11 A (Witness nods.)

12 Q Right?

13 A Yes.

14 Q And you knew Dr. Warden was relying upon
15 you to do that?

16 A Yes.

17 Q When you found this change, you didn't
18 call him either, did you?

19 A No.

20 Q The second time?

21 A No.

22 Q You claim that the breathing remained the
23 same?

24 A Throughout the night, yes.

25 Q And I think you described that as

1 sometimes the baby would have this grunting sound;
2 sometimes he wouldn't?

3 A He would have rest periods where it would
4 go quiet, yeah.

5 Q And when they would come back, did it
6 bother you?

7 A No. In fact, I guess we were kind of
8 relieved when the noise came back again because he
9 was making that same noise again.

10 Q Did you change the position of the baby
11 when he was making that noise?

12 A Each time we checked the baby we turned
13 him from one side to the other.

14 Q And when you turned the baby, would the
15 noise go away?

16 A Not that I can remember, no.

17 Q You have no recollection about that?

18 A I can't remember the noise going away.

19 Q You got up then early in the morning,
20 somewhere around 4:30 or 5 o'clock --

21 A Well, I didn't go to bed.

22 Q Ma'am, please let me ask my question.
23 Please --

24 THE COURT: Well, in this sense, counsel,
25 if you're preceding your question with something she

1 hasn't testified to, I think she has a right to try
2 to correct it so she doesn't give the wrong
3 impression.

4 MR. HANSEN: I agree. I wouldn't want
5 that to happen. But I will try to ask my questions
6 completely and then maybe you can answer them, and
7 if the question is not understood, please tell me.

8 Q As I understand it, early in the morning
9 then you folks went into the front room, Joanne got
10 up and she was holding the baby?

11 A Yes.

12 Q Now, you say that you never went to bed
13 that night at all?

14 A No.

15 Q Your bedroom is separate from either of
16 the two bedrooms Joanne and the baby were in during
17 the night, correct?

18 A Yes.

19 Q Now, when you say you didn't go to bed,
20 do you mean that you did not put on your night
21 clothes and get under the covers?

22 A Yes.

23 Q You did go in, however, and lie on the
24 bed?

25 A Yes, just to rest for awhile.

1 Q And then you would leave the baby and
2 Joanne in the bedroom?

3 A Yes.

4 Q And then from time to time you would get
5 up and go in and check on the baby?

6 A Yes. And sit in there for a time.

7 Q And would you have any idea how many
8 times you did that during the night?

9 A No. I guess I was in the room more than
10 I was out of the baby's room, but I can't say how
11 many times, no.

12 Q How much time went by between checks,
13 Mrs. Young?

14 A Well, I was just -- I was kind of sitting
15 in the room most of the time. I would go into my
16 room for a few minutes and lie down and come back
17 again when the baby seemed to be sleeping. I can't
18 really give a time aspect. I'm sorry.

19 Q After Joanne woke up and you went into
20 the front room and sat there and watched television,
21 Joanne was holding the baby and then I think your
22 testimony was you were doing things around the
23 house?

24 A Yes.

25 Q Now, we come to 8 o'clock and at 8

1 o'clock I believe you testified on direct
2 examination that the breathing of the child stopped.
3 A No, I don't think I said that. I said it
4 seemed as if it stopped. The period of silence was
5 longer and it seemed as if he had stopped breathing.
6 Q Do you remember giving a statement to an
7 Officer Mike Lee and to an investigator by the name
8 of Christine Godnick?
9 A Yes.
10 Q And that was a statement which was taken
11 sometime in February; is that correct?
12 A I can't remember the time.
13 Q I have a copy of that statement. I think
14 it was a statement that was magnetically recorded
15 and then it was typed up and written. Is that your
16 understanding?
17 A Yes.
18 Q You've had a chance to read the
19 statement, haven't you?
20 A I don't recall reading the statement.
21 Q You don't recall?
22 A No.
23 Q Let me just quote part of this statement
24 from you as it relates to the breathing situation.
25 Officer Lee asks this question: "Was

1 there a point in time that you became so concerned
2 that you tried to get a hold of him again," speaking
3 of Dr. Warden. And your answer was: "It was 8
4 o'clock the next morning and Joanne was holding the
5 baby and she said that he suddenly had gone funny
6 and I looked at him and he had stopped breathing. I
7 didn't want to upset Joanne so I had him in my hands
8 and, without Joanne seeing, I was kind of pressing
9 on his chest and blowing into his mouth."

10 A Not pressing on his chest. Kind of
11 rubbing his chest was what I was doing. Just
12 rubbing over the top of the blanket.

13 Q Let me read the rest of it. "She knew
14 that something was up. He kind of came around, so I
15 held him awhile longer and, in the meantime, my
16 daughter brought up a heating pad. Sharon had
17 brought up this heating pad so we put the heating
18 pad on him and we put him in the cradle."

19 A Yes.

20 Q "He even made a noise like a crying
21 sound."

22 A Yes.

23 Q "We thought. It was -- I don't know how
24 long it was. It was probably about 20 minutes to
25 half an hour before I really -- I was really sure it

1 was safe to lay the baby down."

2 A Yes.

3 Q "Then I called the doctor straightaway
4 and they said he wasn't home, but I hadn't called
5 the doctor before. I guess I assumed he would call
6 before he went into his office to see how the baby
7 was."

8 A Yes.

9 Q Now, does that refresh your memory about
10 what happened, Mrs. Young?

11 A Yes. It's difficult -- it was months
12 after when I gave that and it's difficult with the
13 period of time.

14 Q In any event -- excuse me. I'm sorry. I
15 don't mean to interrupt. Had you finished your
16 answer?

17 A Yes, I think so.

18 Q In any event, there was a time at 8
19 o'clock in the morning --

20 A I don't know. It was about 8 o'clock.
21 That's just approximate times.

22 Q All right. Where the baby, you say,
23 seemed to stop breathing?

24 A Yes.

25 Q And then the statement indicated that he

1 indeed did stop breathing?

2 A Yes, he could have done.

3 Q You didn't want Joanne to see that, did
4 you?

5 A No.

6 Q And so you tried to push on the baby's
7 chest without Joanne knowing it?

8 A Not pushing. I was kind of rocking the
9 baby and just kind of rubbing the chest over the
10 blankets.

11 Q Now, this indicates that you were
12 pressing on his chest and blowing into his mouth.

13 A Yes, but the baby was here. I was just
14 kind of blowing like this with the baby here, and I
15 was really just kind of rubbing over the top of the
16 blankets.

17 Q You were holding the baby at the time?

18 A Yes.

19 Q Where was Joanne?

20 A Joanne was sitting beside me on the
21 couch.

22 Q And you didn't say anything to her about
23 that?

24 A No. She could tell there was something
25 wrong, anyway.

1 Q And you could, too?

2 A Yes.

3 Q And as a matter of fact, you were worried
4 about the condition of the baby?

5 A Yes.

6 Q And recognized the baby could be
7 extremely ill?

8 A Yes.

9 Q In fact, if a baby stops breathing, a
10 newborn, even for a moment, that's an indication of
11 grave problems?

12 A Yes. But I wasn't sure that he had
13 stopped breathing.

14 Q Well, all right. But at least you felt
15 that he might have?

16 A Yes.

17 Q And if, in fact, your feelings that he
18 might have were true, you recognize this was very
19 serious?

20 A Yes.

21 Q You worked with the baby about 20 to 30
22 minutes?

23 A No. It wasn't that long. It was -- I
24 don't know.

25 Q Well, that's what the statement says.

1 The statement indicates --

2 A I didn't work with him for 20 minutes.
3 It was about 20 minutes, you know, before I felt
4 that I could put the baby down. I wasn't working
5 with him. I was just holding him and rocking him.

6 Q Let me put it this way. You held the
7 baby for 20 minutes because you were worried about
8 the baby and for that 20 minutes you wanted to hold
9 the baby before you put him down because you were
10 worried about his breathing condition?

11 A Yes.

12 Q And during that period of time, Sharon
13 came up, your sister --

14 A My daughter.

15 Q Or excuse me, your daughter, and then you
16 put the heating pad on the baby?

17 A Yes.

18 Q You didn't mention this breathing problem
19 to Sharon, did you?

20 A I'm sure I did because we were concerned
21 about it.

22 Q Now, then you indicate that after that
23 occurred then for the first time you tried to call
24 Dr. Warden, correct?

25 A Yes, because of the change in the

1 breathing.

2 Q And you tried to call his office?

3 A Yes.

4 Q And you got his answering service?

5 A I can't remember.

6 Q At the time you made the call to either
7 his office or the answering service, you did not
8 indicate there was an emergency with the baby, did
9 you?

10 A No.

11 Q As a matter of fact, you didn't even
12 identify yourself, did you?

13 A I can't remember. I can't remember.

14 Q The word you got back was that the doctor
15 was home?

16 A Yes.

17 Q Now, you didn't call the doctor at home
18 until about ten to 9:00, did you?

19 A No. I called the doctor at home
20 immediately.

21 Q Let me talk with you about another
22 matter. After Dr. Kramer came and the baby was
23 taken to the hospital and, unfortunately, had died,
24 then you came back home -- well, maybe it wasn't
25 then. At the hospital I think Dr. Kramer talked to

1 you. Somebody told you to write down in your own
2 words what happened?

3 A Yes.

4 Q And you did that, didn't you?

5 A Yes.

6 Q I have a copy of what that purports to be
7 -- and let me read just a little bit about that to
8 you, may I? "The next morning I expected Dr. Warden
9 to visit to see how Jareth was doing. At 8:00 a.m.,
10 approximately, Jareth went very white and stopped
11 breathing, it seemed. He rallied around and so we
12 put a heating pad on him and put him in the cradle.
13 He improved and even gave a little cry."

14 "I called Dr. Warden's office when I
15 finished attending Jareth at approximately 8:30 in
16 the morning. I was told he was at home until 9:30.
17 I checked baby again and I made two phone calls, one
18 to Bishop Lloyd and expressed a concern for the baby
19 and the fact that in England he would have been put
20 into an incubator."

21 "At approximately 8:50 I called Dr.
22 Warden's home and he hadn't come to the house. I
23 was told he was not at home and would be in his
24 office at 9:30."

25 Did you then call Dr. Warden at 8:50,

1 Mrs. Young, the second time at his home?

2 A I can't remember the times. The times, I
3 stated, are all approximate, so I don't know. It
4 could have been 9:50. I don't recall.

5 Q Well, 8:50 --

6 A 8:50.

7 Q All right. So it's some 20 or 30 minutes
8 after you call his office that you try to call him
9 at home?

10 A It could be. I can't remember. If
11 that's what it said. The times I remember are just
12 approximate.

13 Q And when you call him at home, you talk
14 to Mrs. Warden?

15 A Yes.

16 Q And you asked if the doctor was there?

17 A Yes.

18 Q She says, "No. He'll be in the office at
19 9:30."?

20 A Yes. And said that -- I can't remember
21 the exact words, but he was -- I can't remember
22 whether it was visits or errands he was doing on his
23 way to the office.

24 Q And you did not indicate to Mrs. Warden
25 anything of an emergency nature with the baby, did

1 you?

2 A No, no.

3 Q In fact, you didn't identify yourself to
4 her, either, did you?

5 A I can't remember. I can't remember.

6 Q Now, Mrs. Young, you have a good friend
7 by the name of Iris Auger?

8 A Yes.

9 Q I think she's from England as well?

10 A Yes.

11 Q You spoke to Iris on the telephone that
12 morning, didn't you?

13 A Yes.

14 Q In fact, did you speak to Iris -- it was
15 after you felt that the baby had stopped breathing?

16 A I can't remember when I spoke to Iris.

17 Q Was it sometime between 8:30 and 9
18 o'clock?

19 A I honestly can't remember what time it
20 was I spoke to Iris.

21 Q When you talked to Iris by telephone you
22 indicated that you were concerned with the weight of
23 the baby?

24 A I can't recall the conversation.

25 Q You can't?

1 baby was sick and I was concerned, but I can't
2 remember whether I told him.

3 Q And that call to him, according to these
4 statements, is somewhere between 8:30 and 9 o'clock
5 in the morning.

6 A Yes. I can't remember the time.

7 Q Now, Bishop Lloyd finally came to your
8 home with Dr. Kramer when, about 10:30?

9 A I don't know. I can't remember the time
10 at all.

11 Q Was it about mid morning?

12 A I can't remember. No. I would have said
13 earlier than that, but I can't remember exactly.

14 Q Now, Mrs. Young, on that particular
15 morning when it seemed to you that the baby had
16 stopped breathing and you were concerned about the
17 baby and you couldn't get Dr. Warden at his office
18 or at his home, you hadn't left a message about the
19 seriousness of the matter. You had a car at home,
20 didn't you?

21 A Yes.

22 Q Your husband was at home, correct?

23 A Yes.

24 Q He drives, doesn't he?

25 A Yes.

1 Q You drive, also?

2 A I didn't at that time, no.

3 Q But he did?

4 A Uh-huh.

5 Q Now, he could have driven you and the

6 baby to the emergency room at the hospital, couldn't

7 he?

8 A Yes.

9 Q You didn't ask him to, did you?

10 A No.

11 Q In addition, you could have called the

12 paramedics, couldn't you?

13 A Yes.

14 Q And they would have come with the

15 ambulance and given the baby emergency treatment?

16 A Yes.

17 Q Couldn't they?

18 A Yes.

19 Q Counsel asked you why you didn't do that

20 and I think your answer was "I don't know."

21 A Yes. I don't know why I didn't, but

22 also, again, back home, as I said, you would have

23 had to have a doctor's permission to have called an

24 ambulance.

25 Q But, ma'am, this baby had stopped

1 breathing.

2 A No. It seemed as if he had stopped
3 breathing.

4 Q And you perceived that to be the case?

5 A Yes.

6 Q Then he came around?

7 A Yes.

8 Q But you didn't seek emergency care or
9 report that emergency to the doctor?

10 A No, because he went back to the same
11 condition he had been in all night.

12 Q Okay. Now, Mrs. Young, after Dr. Kramer
13 came and after Bishop --

14 A Lloyd.

15 Q Yeah, Bishop Lloyd, thanks. After Bishop
16 Lloyd and Dr. Kramer came, then the paramedics were
17 called?

18 A Yes.

19 Q They came and Dr. Kramer and the
20 paramedics took the baby and went to the hospital?

21 A Yes.

22 Q You rode to the hospital with Bishop
23 Lloyd?

24 A Yes.

25 Q In his car?

1 A Yes.

2 Q So you could be home that night for the
3 baby?

4 A Yeah. I was probably on the 6 o'clock
5 shift.

6 Q So probably during the morning hours of
7 Friday you were at work from 6:00 a.m. until 2:30?

8 A Uh-huh.

9 Q Then came home in the afternoon?

10 A Yeah.

11 Q And then you're home all afternoon until
12 the baby is born at night, correct?

13 A Uh-huh.

14 Q Okay. Now, my notes also indicate that
15 you were working for Smith's in the warehouse
16 putting the state tax on cigarettes, as you've
17 testified, and that you were making approximately
18 \$13,000 a year; is that correct?

19 A Yes.

20 Q That was before taxes?

21 A Uh-huh.

22 Q Now, you did have insurance for your
23 family through Smith's Food King, medical insurance,
24 didn't you?

25 A Yes.

1 Q But it would not cover Joanne's pregnancy
2 or birth, would it?

3 A No. And it was also to do with her age
4 as well.

5 Q Because she was 18 and pregnant?

6 A Smith's would not cover it.

7 Q Smith's wouldn't cover it?

8 A No.

9 Q And you understood that to be so?

10 A Uh-huh. After the event. You know, I
11 didn't know it then when I was talking to you.

12 Q But you've learned that to be the case?

13 A Yes.

14 Q My notes indicate that's the case.

15 Now, Mr. Young, Joanne and her mom, I
16 think, your wife, decided that instead of going to
17 Dr. Bitner who was the obstetrician that they would
18 go to Dr. Warden and have this baby at home and then
19 they advised you of that, correct?

20 A Yes, uh-huh.

21 Q I asked you when we had this little talk
22 in the County Attorneys Office what the reason was
23 for having the baby at home and I think you told me
24 money problems. Do you remember that?

25 A It's the truth. Yes, I probably did say

1 that, yes.

2 Q So if you had the baby at home, it would
3 cost less and that would make it easier for the
4 family, right?

5 A That's right.

6 Q And that's because the medical insurance
7 wouldn't cover it, correct?

8 A Uh-huh.

9 Q Now, relative to having this child at
10 home, it didn't trouble you very much because your
11 wife had had four children at home in England,
12 hadn't she?

13 A Uh-huh.

14 Q And I understand that your wife in
15 England even assisted midwives with home deliveries;
16 is that right?

17 A If she was asked to, yeah, uh-huh.

18 Q And she had done that in England?

19 A Well, I won't say lots of times. A few
20 times. Relief Society presidents were called. You
21 know, they're always there when English women have
22 their babies.

23 Q Was she a Relief Society president in
24 England?

25 A She has been. I don't know whether she

1 you have?

2 A I have an MD degree that I received from
3 University of Juarez across the border of Mexico. I
4 did my residency at Creighton University in Nebraska
5 and finished that in 1985.

6 Q And since that time?

7 A I'm practicing at the Tanner Clinic in
8 Layton.

9 Q Since 1985?

10 A Yes.

11 Q What board certifications do you --

12 A I'm a board certified obstetrician/
13 gynecologist.

14 Q Are you familiar with a patient by the
15 name of Joanne Young?

16 A Yes.

17 Q I'm going to hand you what's been marked
18 as Exhibit B and ask you if you recognize that.

19 A Yes.

20 Q What is it?

21 A Those were my clinic notes.

22 Q So you do recognize that as your own --

23 A Clinic notes, yes.

24 Q Can you tell us when you first examined
25 or met Joanne Young?

1 A On June 27th, 1986.

2 Q All right. That was the first day that
3 you had ever met her?

4 A Yes.

5 Q All right. And what was her purpose in
6 coming to visit you on that day?

7 A My notes mention she was an 18 year old
8 single female, had a positive home pregnancy test.
9 She told me that her last menstrual period was the
10 16th of March which put her at about 16 weeks. We
11 use a dopptone, which is an electronic device used
12 to hear the baby's heartbeat, and that was positive.

13 Q Explain to the jury how you do a
14 dopptone, what equipment is required and how it's
15 performed.

16 A It's an electronic device that's used to
17 amplify the baby's heartbeat. We put that on the
18 abdomen and search around until we can find a
19 heartbeat that's faster than the mother's, and with
20 the type of dopptone that I have I can usually hear
21 that somewhere between 13 and 14 weeks, and we could
22 hear the heartbeat at that time.

23 There was some question about her
24 insurance at that time so we didn't do a new OB
25 appointment on her at that time. We started her on

1 prenatal vitamins and asked her to see us in one
2 month.

3 Q You say that you put her at that time at
4 16 weeks. What variables would you have taken into
5 consideration to put her at 16 weeks?

6 A Well, first of all, her last menstrual
7 period dates -- and we use a wheel. I happen to
8 have one here, and there are many different forms,
9 and we just put this at what her last menstrual
10 period was and then look over and figure about how
11 far along she is and what her expected date of
12 confinement is, the date we expect her to deliver,
13 and so that was done and that put her at about 16
14 weeks, and then that was confirmed with our
15 dopptone, which at that time showed fetal heart
16 tones and so we knew that she was at least 13 to 14
17 weeks because we could hear the baby's heartbeat.

18 Q So what then would be your conclusion as
19 to what her date of confinement would be?

20 A Using this thing -- let me just put this
21 on 3-16. That would put her due date on about the
22 21st of December, according to this wheel. And when
23 we saw her on the 27th of June, that put her between
24 14 and 15 weeks. Some of these little wheels vary
25 within a week to ten days and that must be where I

1 got the 16 from rather than it being 14 to 15.

2 Q So somewhere in the neighborhood of 14 to
3 16 weeks would be your conclusion at that time?

4 A That's right.

5 Q Did you do anything else with her on that
6 particular occasion?

7 A Not that particular time, no.

8 Q Did you have any discussions with her at
9 that time with regard to financing delivery of the
10 baby?

11 A Only that we would be glad to help her
12 get things set up with the aid office and encouraged
13 her to go ahead and do that and then encouraged her
14 to come back and see us in a month.

15 Q All right. Did she come back and see you
16 in a month?

17 A No, she didn't. The next time she came
18 was the 8th of August.

19 Q Had she broken any appointments during
20 the interim?

21 A Not that I have -- not that I have
22 written at least here.

23 Q But she did make an appointment to visit
24 you on the 8th of August and came in; is that
25 correct?

1 there's a placenta previa.

2 Q Would the use of an ultrasound at that
3 point in pregnancy cause any danger to the patient
4 or to the child?

5 A No.

6 Q Given then a hypothetical that the
7 patient desires to have a home delivery or home
8 birth, would the performance of an ultrasound or
9 further examination, as you've indicated, would it
10 in any way stop the patient from being able to have
11 a home birth?

12 A I'm not quite sure how to answer that
13 question. I don't perform home births and so I'm
14 prejudiced towards hospital deliveries and I feel
15 more comfortable that way because in my training I
16 was taught that if I'm going to give good care then
17 I give that care in the hospital where I can monitor
18 the baby and I can monitor the mother and if there's
19 a problem we've got surgery and anesthesia and so
20 forth to take care of the complications, so if I had
21 a patient who was bleeding, I'd want to deliver her
22 at the place I thought it was safest.

23 Q But hypothetically if you had a patient
24 who really desired to have their baby at home in a
25 home birth situation, would the performance of the

1 it comes out -- and they have very little fat
2 traditionally so they don't retain their heat very
3 well so it's important to get them heated up right
4 away. We put them right in an Isolette that's nice
5 and warm and heated and, you know, they need that
6 initially.

7 Q Then after the baby is born and taken out
8 of the natural incubator, it has to develop or
9 provide its own heat source, I take it.

10 A That's right.

11 Q What circumstances are there under which
12 a child might not be able to do that?

13 A Well, I don't think any of them can
14 provide their own heat source. I think they all
15 need to be heated. Years ago they would take the
16 baby and put it right on the mother's abdomen and
17 put her under the covers and let the mom's body
18 temperature try and heat the baby back up. That
19 helps.

20 We use an Isolette where we're at that's
21 heated because we can control the temperature. Once
22 the baby is taken to the nursery they're placed into
23 a covered Isolette where they can monitor the oxygen
24 and heat and so forth.

25 Q Let me ask you this. After a child is

1 born and you're watching the child to see how it
2 progresses through the first few hours of its life,
3 what are the things that a person ought to watch to
4 determine the health of the child?

5 A Well, those same things.

6 MR. HANSEN: Your Honor, I would object
7 at this point on the basis that this doctor now is
8 testifying as a pediatrician; that is, a physician
9 who looks after the care of a child, or perhaps more
10 specifically a neonatologist who looks after a child
11 from even a couple of weeks before birth until
12 perhaps a month or two after birth.

13 This gentleman is an obstetrician. His
14 testimony is that he treats mothers who are pregnant
15 and infertility matters. He, in effect, attends the
16 delivery. After the baby is delivered, the nurse
17 does the Apgar, and I think if he were asked he
18 would say that the pediatrician takes over the care
19 of the baby.

20 THE COURT: Thank you. Mr. Namba?

21 MR. HANSEN: I don't think he's qualified
22 to respond to the questions counsel is asking him.

23 MR. NAMBA: I should ask some
24 foundational questions to determine what his
25 expertise is.

1 THE COURT: Sustained. You may lay
2 foundation.

3 Q (By Mr. Namba) In your profession and
4 your practice when you deliver a baby, is there
5 normally a pediatrician present at the time of
6 delivery?

7 A No, there is not.

8 Q Who is charged then with the
9 responsibility to look after the infant?

10 A Well, the nursing personnel are,
11 certainly, and if there are any acute problems with
12 the baby, if the baby has to be intubated, I'm
13 trained in intubation and I can intubate the baby
14 and handle it until the pediatrician arrives, but I
15 do not take care of babies traditionally.

16 Q If there is a problem that arises then in
17 the development of a child, you would call in a
18 pediatrician?

19 A That's right.

20 Q All right. Let's go back then to the
21 issue of what happens prior to the baby being born,
22 given the circumstance that you have a patient 34 to
23 35 weeks into their pregnancy with blood about the
24 amount that a person would expect during a normal
25 period, and basically that's all the information

1 that you had received over the telephone.

2 If a physician under that circumstance
3 were to not make any further investigation or take
4 any further action to look at the patient, would you
5 consider that in this region of the area to be
6 within the standard of care of obstetricians in this
7 area?

8 A I think if a patient calls me and she's
9 bleeding and she's 34, 35 weeks, I'm always worried
10 about the possibility of premature labor, the
11 possibility of premature separation of the placenta,
12 the possibility of regular dilatation of the cervix,
13 the possibility of placenta previa, and I don't feel
14 comfortable unless I have that evaluated. Whether
15 or not that means coming into the office, whether
16 that means going to the hospital, I think that
17 depends on the judgment of the physician.

18 Q Physicians have to make a lot of
19 decisions during their work?

20 A That's right.

21 Q My question is if you were to take --
22 your decision may not always be the same as other
23 obstetricians in this area, but based on generally
24 the obstetricians in this area, would you consider
25 that action or inaction to not take any action at

1 that point, to just simply say "Call me if any of
2 these things happen," would that be within the
3 common standard of practice in this area?

4 A I think that's hard for me to answer. I
5 think all I can say regarding that is that if it
6 were my patient and she was bleeding and I knew the
7 patient, I'd want to know how much bleeding she's
8 doing. If she's bleeding like a heavy day on her
9 period, then it needs to be evaluated and I would
10 have them come in right away. My partner would do
11 the same thing and I think that's the standard of
12 care in this area, is that it needs to be evaluated.

13 Q Do you have anything else you want to
14 say?

15 A No.

16 Q Now, elevating that to the point where
17 you know that the patient is in labor and is about
18 to deliver, what complications could you foresee
19 based on those factors?

20 A That she's been bleeding?

21 Q Yes. And that she's only 34 to 35 weeks
22 in her gestation.

23 A I'd be worried that there's going to be a
24 problem with the baby and its lungs not being
25 developed. The surfactant, the chemical that is

1 produced and keeps the lungs functioning usually
2 doesn't start to kick in until about 34 weeks and
3 that's why we don't deliver those at a place without
4 a respirator.

5 Q Now, looking at the situation from a
6 retrospective point of view -- I won't get into
7 that.

8 MR. NAMBA: That's all the questions I
9 have of this witness.

10 THE COURT: Thank you. Mr. Hansen?

11 MR. HANSEN: Yes, your Honor. Thank you
12 very much.

13 CROSS-EXAMINATION

14 BY MR. HANSEN:

15 Q Dr. Bitner, you indicated you were a
16 board certified obstetrician. At the time you were
17 taking care of Joanne, you were not a board
18 certified obstetrician, were you?

19 A I was a board eligible obstetrician.

20 Q Well, that board eligible is different
21 than board certified, isn't it?

22 A Not at that time in my training, no, it's
23 not.

24 Q What you have to do to become board
25 certified is take a test and pass it and then

1 Q And they would recommend against home
2 deliveries?
3 A That's right.
4 Q And I suppose the recommendation against
5 home deliveries is because in certain circumstances
6 there are situations in the home that may develop
7 that you can't take care of, whereas in the hospital
8 you might be able to take care of them?
9 A That's correct.
10 Q Some other examples between the
11 difference in a hospital versus a home environment,
12 I guess, would be in a hospital after the baby is
13 born the nurse does the Apgar assessment, not the
14 doctor?
15 A Right.
16 Q At home the doctor would handle the birth
17 and do the Apgar because there's no nurse, correct?
18 A If they perform an Apgar at all. I don't
19 know. I don't do home deliveries.
20 Q Well, just in terms of thinking about it,
21 that would be an obvious difference, would it not?
22 A Uh-huh.
23 Q Correct?
24 A Correct.
25 Q Another difference, I suppose, is that if

1 you're in a hospital situation, after the baby is
2 born, the obstetrician -- I shouldn't say that. As
3 I understand it, I think the nurse will take the
4 baby and the baby then will be taken to the nursery
5 and will be looked after by the nurses and the
6 doctor stays with the mother and handles care of the
7 mother after delivery?

8 A That's correct.

9 Q And that might include the suturing of
10 the perineum and whatever other treatment is
11 appropriate, correct?

12 A That's correct.

13 Q Now, if you compare that with a home
14 delivery, the doctor, or whomever it is that is
15 attending the home delivery, must, after the baby is
16 born, evaluate the child and also care for the
17 mother because this is at home, and the doctor, if
18 it is a physician, is the only one there, correct?

19 A That's correct.

20 Q And in terms of the caring of the child,
21 then the child is going to have to be looked after
22 in a home setting as distinguished from a hospital
23 by either the mother or some other parent or family
24 member at the home in lieu of the nurse in the
25 nursery at the hospital, correct?

1 A That's why I don't do home deliveries.

2 Q Now, in a hospital situation when you --
3 and you'll have to help me here. Let's talk about
4 the Humana Hospital. Let's suppose you have a baby
5 with an Apgar of eight that goes in the nursery. Is
6 there a policy in the hospital of the ratio between
7 how many babies one nurse will look after?

8 A I'm sure there is.

9 Q Can you give me your best judgment?

10 A I think -- well, I know there's always
11 one nurse in the nursery and always a postpartum
12 nurse and a labor and delivery nurse. If there's
13 two or three labor and delivery patients then
14 there's two nurses. I think they get the
15 appropriate number of backup nurses to handle the
16 baby's.

17 Q Generally one nurse will look after four
18 or five or even six children?

19 A I don't think that many.

20 Q Well, do you know? At home at least
21 you're talking about one on one or maybe two on one
22 depending on who at home is able to look after the
23 child.

24 A That may be true, but you're talking a
25 nurse and someone who is not trained.

1 Q Exactly. And I suppose one distinction
2 between a home delivery and a hospital delivery is,
3 if it's a physician involved, is a physician's
4 assessment of the family backup in the home and the
5 competency of that family backup to look after the
6 child after it's born, or would you have a feel for
7 that, in light of the fact you don't do home
8 deliveries?

9 A Well, I certainly could not expect --
10 unless the mother -- unless the backup personnel
11 were an LPN or RN's or something. That's the only
12 way I would be able to have any comfort in saying
13 I've got some support because here's a trained
14 person.

15 Q In Utah it is not illegal to have a home
16 delivery, is it?

17 A No.

18 Q But nevertheless, the physicians and the
19 obstetricians who are board certified like yourself,
20 and I could even expand that to say the medical
21 school, do not recommend home delivery, they do not
22 train home delivery, they do not assist in any way
23 to help in home delivery if a mother decides to have
24 a home delivery; isn't that true?

25 A That's true. We recommend against it.

1 Q All right, sir. Now, let's talk a little
2 bit about Joanne. She came in to see you. She told
3 you, I believe, her last menstrual period was March
4 the 16th, 1986?

5 A Right.

6 Q You then took out your wheel and you made
7 an assessment that the due date was December the
8 20th, '86. You used the dopptone device and
9 listened to the heart rate and confirmed that the
10 little wheel was about right. Now, relative to the
11 little wheel, I think you indicated that it could be
12 ten or fourteen days off?

13 A Not that far.

14 Q Well, ten days off?

15 A Less than ten.

16 Q Ten or less. Okay. So you've got a week
17 and a half variance, correct?

18 A Right.

19 Q Now, after she came in to see you, you
20 didn't do an OB exam because the money problem had
21 not been resolved?

22 A Right.

23 Q Then when she came in the second time you
24 did the full OB exam, which included the tests, and
25 then you said to her, I assume, words to this

1 effect: "Joanne" -- let me ask this. Was grandma
2 with her, Joanne's mother?

3 A I think she was.

4 Q You're talking then, I take it, to Joanne
5 and her mom and you're saying to them, "I think we
6 need an ultrasound," correct?

7 A That's correct.

8 Q And that's 100 extra dollars, correct?

9 A I don't know if I specifically told her
10 the price, but I did tell her I thought she needed
11 the ultrasound.

12 Q Now, the ultrasound at this stage is to
13 confirm the date of delivery in your mind?

14 A As well as to determine twins and
15 placental location.

16 Q Right. But the main reason is to confirm
17 date of delivery?

18 A That's right.

19 Q Because you were uncertain that December
20 20th was correct?

21 A That's right.

22 Q You were uncertain for two reasons. One,
23 you have a ten day leeway in the wheel and, in
24 addition to that, this young lady comes in, she's
25 pregnant out of wedlock and your experience is that

1 sometimes they cannot really give you accurate
2 information as to when conception occurred; isn't
3 that true?

4 A I don't think I can make a general
5 statement like that. Certainly some people who are
6 out of wedlock can tell me the exact date, but in
7 this particular case, as I remember, there was some
8 concern, some question.

9 Q You had some concern, some suspicion;
10 hence, the ultrasound to verify the due date,
11 correct?

12 A That's right.

13 Q After you had met her the second day,
14 which I believe was the 8th of August, 1986 --

15 A Right.

16 Q -- and did all the tests and you
17 recommended the ultrasound, I take it that in order
18 to do the ultrasound, she then would have to come
19 back and go to the hospital for that test.

20 A No.

21 Q Could it be done in your office?

22 A In our office.

23 Q Did you make an appointment for her to
24 come back for that test?

25 A I instructed her to make an appointment

1 got this request for these records.

2 Q It's your understanding, I believe, that
3 she was concerned about finances and at least that's
4 the reason she was changing doctors, whether it was
5 for a home delivery or for some other reason?

6 A Well, as I mentioned in my clinic notes,
7 there was some question on insurance and we referred
8 her to the aid people and so forth to try and help
9 that out.

10 Q In terms of the cost, Doctor, of your
11 services, we've had testimony in this trial from
12 Mrs. Young that the doctor and the hospital costs
13 were estimated to be in the neighborhood of \$1,600;
14 is that accurate? And this is back in 1986.

15 A Yeah. That's probably pretty close.

16 Q Okay. Now, let me talk to you about
17 August the 8th when you did the exam. You took all
18 the tests and you found that, in your opinion, that
19 everything looked pretty normal at the time,
20 correct?

21 A Correct.

22 Q When an obstetrician cares for a pregnant
23 mother, the obstetrician will make an assessment as
24 to low risk, high risk or questionable risk in terms
25 of the pregnancy, does he not?

1 A I think they do in their mind. There's a
2 new form that we're using now that does have some of
3 those risk assessments. Whether it's a teenage
4 pregnancy, whether they have a history of drug or
5 alcohol abuse, high blood pressure or so forth, yes,
6 we do make that assessment.

7 Q Your assessment in '86 was that Joanne
8 was a low risk pregnancy?

9 A No, it was not.

10 Q Let me go back to your prior testimony,
11 Doctor.

12 MR. WILSON: Could you reference the
13 page, Mr. Hansen?

14 MR. HANSEN: Yes. This is on page 12.

15 THE COURT: Mr. Hansen, while you're
16 looking for that and counsel are looking, let me
17 mention to spectators that it is inappropriate for
18 you to react to testimony. I direct you not to do
19 that. If you persist in doing it, I'll have the
20 bailiff remove you from the courtroom. All right.
21 Please continue.

22 Q (By Mr. Hansen) Let me put it this way.
23 I understood you to testify prior under oath that
24 this would be considered a low risk pregnancy. Do
25 you remember so testifying?

1 A I don't remember. I think -- at least my
2 feeling for the answer, if that's what I made, was
3 that as far as she was progressing at that point it
4 seemed to be low risk, but a teenage pregnancy is
5 never a low risk pregnancy so that's where I'm --
6 Q What you're really saying is that if you
7 have a teenage pregnancy and it's a first pregnancy
8 you have to be cautious?
9 A That's right.
10 Q But in terms of any symptom or indication
11 that there may be problems in this pregnancy, when
12 you saw her on the 27th of June and then on August
13 the 8th, you found no symptomatology that would be
14 indicative or that would indicate that there would
15 be problems?
16 A Based on the information I had. That's
17 why I recommended the ultrasound.
18 Q All right, Doctor. Thank you. Now, sir,
19 after she didn't come back for the ultrasound and
20 didn't come back for the September appointment and
21 you received the request for records from Dr.
22 Warden, I think you were asked if Dr. Warden ever
23 called you and you said no.
24 A That's right.
25 Q At the same time you never called Dr.

1 recommend home deliveries but your suspicion was
2 that she was going to Dr. Warden for a home
3 delivery, you still didn't call Dr. Warden or speak
4 to him about it, nor did you call Joanne and say,
5 "Joanne, think about it. I'm not sure that's the
6 thing to do," correct?

7 A I did not.

8 Q All right. Now, you know Dr. Warden and
9 you know him as a physician and you've been in
10 contact with him from time to time, haven't you?

11 A Yes, I have.

12 Q And he's a member of the medical
13 community here in Davis County, is he not?

14 A Yes, he is.

15 Q When you testified in this case before I
16 asked you the question -- and this is page number
17 21, counsel, lines 2 through 4. My question to you
18 is: "You find him to be a competent, able
19 physician, don't you?" And your answer was: "As
20 far as I know." Do you remember that?

21 A Yes.

22 Q And that was and is your testimony,
23 correct, sir?

24 A That's correct.

25 Q Now, counsel talked to you a little bit,

1 Q And the cervix, that area of the body,
2 and indeed the uterus for that matter, is an area of
3 a female's body that is very, very vascular and
4 there's a great deal of blood supply to that area of
5 the body?

6 A That's correct.

7 Q Therefore, when this effacement occurs
8 and when the dilation occurs, very often these blood
9 vessels will rupture and there will be some bleeding
10 during the course of labor?

11 A That's true.

12 Q And especially when you have a first time
13 pregnancy?

14 A I don't think that's related. I think it
15 happens whether it's first time or not.

16 Q All right. Okay. Now, what a doctor has
17 to do -- you use the term judgment and I know we've
18 talked about this before. In the medical profession
19 a doctor is called upon every day many, many times
20 to exercise medical judgment, isn't he?

21 A Yes.

22 Q And so medicine is not so much a science
23 as it is an art?

24 A That's correct.

25 Q And what medicine is is the ability of

1 the doctor to see the patient, assess the patient,
2 assess symptoms of the patient and then attempt to
3 diagnose appropriate care and treatment?

4 A That's correct.

5 Q And that's going to occur by the doctor,
6 and his ability to do that will be based upon two
7 things, his training and, second of all, his
8 experience?

9 A That's correct.

10 Q And as a matter of fact, when a physician
11 is in residency, it is the experience that the
12 physician is trying to develop with reference to his
13 expertise?

14 A That's correct.

15 Q All right. Under the tutelage of a
16 doctor who is senior in terms of practicing the art,
17 correct?

18 A Certainly.

19 Q Now, I want to talk to you about judgment
20 in a minute, but I want to talk with you about
21 bleeding first and what the indication of bleeding
22 means. You said there were three levels of
23 bleeding, scant bleeding and heavy bleeding and what
24 you call foot bleeding. That's where the blood runs
25 down the leg of the person with the problem, the

1 female, correct?

2 A (Witness nods.)

3 Q You have to answer for the --

4 A Yes.

5 Q Okay. Thanks, Doctor. We have some
6 strange requirements in our business, Doctor. I
7 apologize, but thank you for responding verbally.

8 Now, I'm not sure that it's clear what
9 the symptoms of heavy or foot bleeding might be.

10 As I understand your testimony, one of
11 the symptoms is medically what they call placenta
12 previa, correct?

13 A That's correct.

14 Q Placenta previa means that the placenta,
15 in effect, has found itself down below the uterus
16 covering the top of the cervix, correct?

17 A That's correct. That's complete previa.
18 There's partial previa where it's partially down
19 there and the majority is on the upper part.

20 Q And the danger of placenta previa is that
21 if it's totally covering the cervix or if it's a
22 partial previa where it's covering just a portion of
23 it, that when this child, through contractions, is
24 pushed into that area of the human anatomy, that the
25 placenta may rupture, and if indeed it ruptures

1 during pregnancy, that is probably the most -- that
2 area has so many blood vessels there that the amount
3 of blood in that area is profound, correct?

4 A That's correct.

5 Q And so if the child is pushed against the
6 placenta because the placenta gets caught between
7 either the head, if the child is coming head first,
8 or some other part of the body and that placenta
9 ruptures, it can be absolute disaster because the
10 mother may bleed to death?

11 A That's certainly possible, yes.

12 Q And if indeed there is any indication
13 that there is a placenta previa, that is why the
14 bleeding is going to be perhaps of the foot bleeding
15 type, all the way down the leg?

16 A That's not necessarily true. In my
17 experience, a patient who has a placenta previa that
18 we have diagnosed already on ultrasound, many times
19 will come into the hospital around 30 weeks or 34
20 weeks or 36 weeks, before her term time, with some
21 amount of bleeding, and that's that normal
22 effacement that's going on that we talked about of
23 the cervix and that bleeding most of the times or
24 much of the time will stop. We put them in the
25 hospital, we put them at bedrest, put restrictions

1 on so if the bleeding gets brisk we can do a
2 C-section and save baby and mom.

3 Q If indeed, it is a placenta previa the
4 indicated procedure is a C-section?

5 A That's right.

6 Q I mean, any other procedure just doesn't
7 work. I mean, it puts the woman at too great a
8 risk.

9 A Not only the woman. If the placenta
10 comes out first, there is no oxygen to the baby.

11 Q Normally with placenta previa you've got
12 heavy bleeding or foot bleeding?

13 A Like I say, not all the time. If they
14 come in early, there's not always a heavy amount of
15 bleeding.

16 Q Next is placenta abruptio and that is
17 where the edge of the placenta is coming loose from
18 the uterus and you get the same problem in terms of
19 a potential of serious bleeding, correct?

20 A That's correct.

21 Q And then you could have a uterine
22 rupture, and if you had that, it could be
23 catastrophic. You could have serious bleeding,
24 correct?

25 A That's correct.

1 Q And then there's another indication which
2 bleeding might suggest which is called vasoprevia
3 which is an abnormal development of the blood
4 vessels in the placenta itself?

5 A That's correct.

6 Q Generally in all of those cases, if you
7 have bleeding that is more than scant, you're put on
8 notice to be cautious?

9 A That's correct.

10 Q All right. Now, Doctor, let me give you
11 a hypothetical and add a little bit to what counsel
12 has already suggested to you. You have a situation
13 where there is a young lady, 18 years old, first
14 time pregnancy. She, on a given morning, about 8:00
15 a.m. indicates to her mom that she's spotting, okay?

16 Her mom doesn't check the discharge and,
17 as a matter of fact, never does during the course of
18 the day. Her mom gets in touch with the physician
19 who is probably 20 or 30 miles away because he is
20 the physician for a football team as well and
21 they're playing in a state tournament, but Mother is
22 able to get in touch with the doctor by telephone,
23 okay?

24 During the course of this discussion
25 there is a statement by the mother that suggests

1 that this baby that was thought to be due, based on
2 records from your office, in mid-December, that
3 conception may have occurred a month early because
4 that's what the father has said, and the daughter,
5 the mother of the baby, may acquiesce in that, and
6 grandma, this person calling the doctor, indicates
7 that this baby, if that's the case, is term.

8 The doctor talks to the grandma. He's 30
9 miles away. Under the circumstances, the bleeding
10 is a small amount. He's told that pregnancy may
11 have occurred a month early and he says to the
12 person that is calling, "Keep the patient down.
13 Watch carefully and call me if this worsens."

14 Now, medicine being the judgment it is,
15 the art that it is, under the circumstances then
16 existing, you would have to say, would you not, that
17 that judgment is not incorrect, given the
18 hypothetical facts?

19 A I can't fault that.

20 Q Okay. Let's take it a step further. The
21 bleeding eases during the day and perhaps even
22 stops. The baby is born that night at 10:40. This
23 is part of the hypothetical. The doctor who was
24 called earlier in the day is in attendance, and when
25 he is there, when he first sees the mother upon

1 arriving at the home -- this is a home delivery.
2 When he first sees the mother, there is no evidence
3 of bleeding on the bed where she is lying. He
4 examines her internally and he finds that there is
5 no evidence of extensive bleeding by reason of that
6 examination.

7 The baby is born and after the baby is
8 born the placenta comes and when the placenta comes
9 there is no indication that it is torn. It is
10 intact.

11 A Okay.

12 Q Before birth occurs, the amniotic
13 membrane ruptures and the amniotic fluid comes
14 through the birth canal and exits the perineum like
15 always happens in pregnancy and the fluid appears to
16 be clear and not infected by any pinkish color that
17 would suggest blood from inside the body somewhere.

18 A Okay.

19 Q Now, under those circumstances, Doctor, I
20 suppose that there are some clinical conclusions.
21 One is there was no placenta previa?

22 A That's correct.

23 Q Two is there was no placenta abruptio?

24 A I would agree if the fluid is clear.

25 Q Three is there was no uterine rupture?

1 A I'd agree.

2 Q Four is there was no vasoprevia?

3 A I'd agree.

4 Q Five is that the doctor, in exercising
5 the art of medicine and making a judgment and saying
6 to the mother "wait and watch," turned out to be
7 just right, didn't it?

8 A In this case, that's correct.

9 Q Now, doctor, let me talk to you a little
10 bit about this Apgar and this assessment of a child
11 after it's born. From your testimony, I take it
12 that in terms of the Apgar assessment that that is
13 done in your practice by the nurse who is in the
14 delivery room with you when your patient gives
15 birth.

16 A That's correct.

17 Q And as a matter of fact, she does that so
18 frequently that, of the five elements, you can now
19 only remember four?

20 A I can remember the fifth, but I --

21 Q What is it?

22 A It's respiration rate.

23 Q Okay. I thought -- well, all right. But
24 you don't make those assessments?

25 A No.

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1 Bishop Lloyd, and he asked me to have a look at a
2 newborn that was born the evening before in the home
3 of the Young family and the bishop felt that the
4 baby was very small and probably should not be at
5 home, should be in a hospital setting, and I agreed
6 to come and I told him we would meet at the church
7 which is just across the street from the Young
8 family. I didn't know where they lived so I met him
9 there and we went over to the house, the home of the
10 Young family and --

11 Q So you went there together?

12 A We went together.

13 Q Do you remember what time it was, what
14 time of day it was you were called?

15 A In my notes -- when we arrived at the
16 hospital I put this in my hospital notes, and I put
17 it at probably around ten after 10:00.

18 Q The phone call came to you at your home?

19 A About that, yeah, and I probably arrived
20 at the Young family maybe 20 minutes later. To me,
21 at that time there was nothing expressed about any
22 danger but that the baby was of concern. It was
23 mentioned about the small size of the infant. So I
24 met in maybe 15, 20 minutes and that's what I did
25 then.

1 And when I arrived at the home of the
2 Young family I was led to one of the bedrooms and
3 there was the mother and the baby. The baby was
4 wrapped and I unwrapped the baby and the baby was
5 very pale and I could not see any breathing. I had
6 my stethoscope with me. I listened to the baby's
7 heartbeat and there might have been one or two
8 heartbeats, but nothing continuous.

9 Q When you walked into the room, where was
10 Jareth?

11 A He was with the mother in the bedroom.

12 Q In her arms?

13 A In a bedroom.

14 Q And when you examined Jareth, where did
15 you conduct the examination?

16 A When?

17 Q Where.

18 A In the room where the mother and the baby
19 stayed.

20 Q There at the bed?

21 A Yes.

22 Q In her presence?

23 A Yes.

24 Q And when you observed the baby, what
25 things did you notice were unusual?

1 A The baby had an unusual color, very gray,
2 white, and did not breathe, was flaccid, did not
3 move.

4 Q Did you notice anything about the
5 temperature of the baby?

6 A No. I did not check the baby's
7 temperature.

8 Q But you did check the heartbeat and you
9 used a stethoscope?

10 A I used my stethoscope which I had with me
11 and I listened for a short time. I did not hear any
12 regular heartbeat. There might have been one or two
13 heartbeats, but very irregular.

14 Q What did you do then?

15 A I left the room and briefly talked to the
16 bishop, told him, "This baby is dying." Something --
17 the baby is dying, baby is dead, and we discussed
18 what we should do and we felt it's probably best
19 just to call the paramedics and the ambulance and
20 bring the baby to the nearest hospital which would
21 be Humana Hospital.

22 Q When you say you discussed it, who was
23 present during that discussion?

24 A At least I talked to the bishop. I'm not
25 sure whether the grandmother or the grandparents

1 were around. I do not recall this. At least I left
2 the room and went in the foyer of the house and I
3 took the telephone and called the paramedics and
4 then right afterwards we went back and got the baby
5 and took the baby in the living room of the family
6 and put the baby on the couch and we started
7 resuscitation, did mouth to mouth resuscitation and
8 external cardiac massage. We did this until the
9 paramedics arrived.

10 Q Now, as you were doing that, did you ever
11 check the infant to see if he had regained his
12 heartbeat or his respiration?

13 A We observed the baby and there was no
14 respiration or no spontaneous respiration. There
15 was no change in the color during that time.

16 Q So what else did you do then?

17 A We just continued until the paramedics
18 arrived and then we took the baby to the ambulance
19 which came at the same time or shortly after and
20 continued with our resuscitation effort and brought
21 the baby to the emergency room of Davis North.

22 Q Davis North is a hospital?

23 A It's a hospital in Layton. Humana
24 Hospital, Davis North.

25 Q You practice through that hospital?

1 A Yes. I'm affiliated with this hospital.

2 Q When you arrived at the hospital, what
3 did you do?

4 A We immediately intubated this child,
5 which means we placed a tube in the windpipe, and
6 bagged him with a hundred percent oxygen, and baby
7 had good excursion, the lungs were aerated. We felt
8 oxygen was getting in the lungs, but baby was placed
9 on a monitor and there was no heartbeat noticeable
10 on the monitor. And we gave some medicine,
11 epinephrine, which is a medicine that is used to
12 reactivate the heart, and we placed this through a
13 tube into the baby's lung and there was still no
14 change.

15 Q Explain to the jury how you administered
16 the epinephrine.

17 A We place epinephrine in this tube which
18 goes down into the windpipe and we just kind of push
19 it down with a syringe and we push air -- I mean we
20 bag with bags and the medicine goes directly into
21 the windpipe and down the bronchial tubes.

22 Q What is the purpose of the epinephrine?

23 A To be absorbed into the tissue and to
24 activate the heart.

25 Q Did you receive any response from the

1 epinephrine?

2 A No. There was no response. There was
3 still no heart activity of the monitor noticeable.

4 Q How long did you work on Jareth there in
5 the hospital?

6 A In the hospital 15 minutes.

7 Q Then what happened?

8 A There was still no heartbeat. I checked
9 the baby. Pupils were fixed and dilated which means
10 they are wide open. There was no response to light.
11 Normally --

12 Q You say normally?

13 A Normally they should respond to light.
14 They should constrict or get smaller. And we
15 checked temperature and temperature was 94 degrees
16 rectally, which is quite low. After 15 minutes,
17 plus minutes before in the ambulance, then we
18 decided this baby is not viable. Baby is dead. We
19 did do what we call a blood gas which we take a
20 sample of blood and we check it for certain
21 parameters. We check for oxygen concentration, for
22 pH in the blood, and the pH was very, very low. It
23 was 6.5. I have it written down.

24 Q What conclusion did you draw from that?

25 A Which means that baby is not viable, that

1 baby is basically dead.

2 Q Explain to the jury how you take the
3 blood gas.

4 A There are different ways to do it.
5 Sometimes if the baby is fairly still we just poke
6 the heel and get some blood from the heel, just a
7 few drops of blood, which is enough. Sometimes we
8 try to stick a needle into an artery to get blood
9 from this source. And on this little baby I placed
10 the needle directly into the heart which -- I just
11 wanted to confirm this baby is dead and there's no
12 need to continue any resuscitation. I placed the
13 needle into the heart and drew blood out and this
14 was again 6.57, which is not compatible with life.

15 Q When you went to the house originally,
16 you went in response to a call from a bishop; is
17 that correct?

18 A Right. Yes.

19 Q He's not your bishop?

20 A No.

21 Q In what capacity were you going to the
22 house?

23 A As a physician, I assume.

24 Q You weren't going as a home teacher, a
25 church assignment?

1 A No. I had not met the Youngs before and
2 I have not had any dealings with the bishop before.

3 Q What did you do after you completed the
4 blood gas?

5 A Again, we stopped any further activity
6 and declared the baby dead.

7 Q So you were the physician who declared
8 the child to be dead; is that correct?

9 A Yeah.

10 Q After you made that conclusion, did you
11 take any measurements of the child, the size?

12 A I checked the child over, checked weight
13 and height and head circumference and we plotted --
14 I plotted this on a so-called gross chart which
15 enables us to tell how old a child is in terms of
16 gestation, whether that child may be premature, just
17 a small -- some babies are small but still mature,
18 but it just helps us determine what we call
19 gestational age of the infant.

20 Q What was your purpose in taking those
21 measurements?

22 A To get an idea whether this baby was
23 premature, because when I checked the baby it was
24 obviously very small. And this plotting is getting
25 weight and height and head circumference and

1 to whether or not the child should have been
2 hospitalized prior to the time that you came to see
3 the child?

4 A I believe that the child, in my opinion,
5 was obviously very small and should have been in a
6 hospital setting where the baby should have been
7 observed very carefully, monitored very carefully,
8 watched very carefully and appropriate tests should
9 have been done. I believe that's the way to go.

10 Q Based upon those measurements, the
11 outward physical measurements of the child, do you
12 have an opinion as to whether or not that child was
13 a well child?

14 A A baby that is very premature -- and six,
15 seven weeks is very premature -- is not a healthy
16 baby.

17 Q And so from the time of its birth, even
18 if it shows -- if it shows outward signs, given the
19 hypothetical that it showed outward signs of health,
20 do you have a conclusion as to whether or not it
21 ought to be hospitalized?

22 THE COURT: Doctor, do you understand
23 that question?

24 THE WITNESS: I believe.

25 THE COURT: All right. Did you mean to

1 BY MR. HANSEN:

2 Q Dr. Kramer, I just have a few questions
3 for you, if I may. I take it that when Bishop Lloyd
4 called you, the only symptom he gave to you or
5 concern of the baby was its size?

6 A Yes.

7 Q I believe, however, you did talk with
8 grandma, Ivy Young, the grandma of the baby after
9 you had taken the baby to the hospital?

10 A Yes.

11 Q And learned then that Grandma Young had
12 observed the baby stop breathing at 8 o'clock in the
13 morning?

14 A That's what I wrote in my notes. For a
15 short time. And then the baby started to breathe
16 again.

17 Q I understand, but at least the baby had
18 stopped breathing at 8 o'clock?

19 A Yes.

20 Q And you arrived at the home two and a
21 half hours later, about 10:30, after having been
22 called by the bishop?

23 A Yes.

24 Q All right, sir. Now, Doctor, if I
25 understand your testimony, I think your testimony is

1 A That's what I was told.

2 Q And I understand that you feel that that
3 is inappropriate because the baby should have been
4 placed in the hospital? That's your conclusion?

5 A That's my opinion.

6 Q Now, Doctor, in that regard, let's talk
7 about the progression of the disease. This child
8 lived approximately 13 hours. You have given
9 testimony under oath before in this case, have you
10 not?

11 A Yes.

12 Q And I believe in that particular
13 testimony you indicated that upwards of ten and
14 perhaps eleven hours, if the physician had been
15 called, the baby's life may have been saved,
16 correct?

17 A Would you rephrase that?

18 Q When you testified under oath you
19 testified before that had this baby been
20 hospitalized up to ten or eleven hours after birth
21 you were of the opinion the baby may have been saved
22 in terms of its life?

23 A I do not remember my correct wording, but
24 do you have it?

25 Q Well, do you disagree, Doctor --

1 A I do not remember my correct wording but
2 I most likely said that the sooner the baby receives
3 support, the better, his outcome is, and the longer
4 time that elapses, the chance of the baby's survival
5 are --

6 Q I guess what I'm talking about in this
7 case, because this is, in effect, a homicide or a
8 murder case, I'm talking about when the baby had no
9 chance of living, and the last time -- let me see if
10 I can refresh your memory.

11 My question to you is: "Let's suppose
12 it's two hours. Could the life of the baby have
13 been saved?" Answer: "Possibly."

14 Question: "Three hours?" Answer:
15 "Possibly."

16 Question: "Five hours?" Answer: "Yes."

17 Question: "Six?" Answer: "Yes."

18 Question: "Seven?" Answer: "Yes."

19 Question: "Eight?" Answer: "Possibly."

20 Question: "Nine?" "Possibly."

21 Question: "Ten?" And you say, "I don't
22 know. Possibly."

23 And then my question to you: "Ten hours?
24 If you would have been able to intervene at ten
25 hours, could you have or your colleagues at the

1 hospital have saved the life of the baby?" Answer:
2 "But I think that the survival rate would be much
3 less. It depends on the degree of severity of this
4 infant's disease."

5 My question is: "Do you have an opinion
6 as to whether you could have saved the baby's life?"
7 Answer: "I or the medical profession, yes."

8 Question: "That's at ten hours?" Answer:
9 "Possibly, yes."

10 Question: "How about 11 hours?" "It may
11 not be possible anymore. I don't know."

12 That was your testimony then and
13 presumably it's the same today, correct?

14 A Yeah.

15 Q So I take it the problem in this case is,
16 in terms of the life of the baby, is that the baby
17 didn't get to medical care, pediatric medical care,
18 as you've described, until at least 12 hours after
19 birth and then you were not able to save its life.
20 You declared it dead at 11:15, almost the 13th hour,
21 correct?

22 A Yes, I declared the baby dead.

23 Q So I guess the question in this case in
24 terms of judgment on the part of Dr. Warden is
25 whether he ought to have vested his confidence in

1 the family to watch the baby after birth. That's
2 what you disagree with?

3 A I'm not sure whether Dr. Warden had the
4 confidence of the parents to watch this baby. I'm
5 not sure what happened, but I believe, if I can
6 explain this, I believe that parents or grandparents
7 are not in the position to evaluate a baby's
8 situation where the baby is, in my opinion,
9 premature.

10 Q My point is you then feel -- if I give
11 you a hypothetical and tell you that Dr. Warden
12 attended this delivery at birth and after the birth
13 of the child reposed confidence in the grandmother
14 of the child to watch the baby and call him if there
15 were problems, that you feel that his judgment in
16 leaving the baby at the home was bad judgment?

17 A I think so, yeah.

18 Q All right. And I suppose, Doctor, in
19 terms of evaluating that judgment -- we've had
20 testimony in this trial from prior witnesses that,
21 in the medical profession, it's a great deal of
22 judgment, given the facts of an individual case.
23 Correct?

24 A Yes.

25 Q In fact, a doctor is always exercising

1 judgment, is he not?

2 A (Witness nods.)

3 Q Correct?

4 A Yes.

5 Q Now, in that context, Doctor, I

6 understand -- well, let me put it this way. You're

7 acquainted, are you not, with Dr. Bitner?

8 A Yes.

9 Q Dr. Bitner is at the Tanner Clinic as one

10 of your colleagues?

11 A That is correct.

12 Q Dr. Bitner testified before you took the

13 stand today that he does not recommend home

14 deliveries, and I believe you are of the same

15 opinion, are you not?

16 A I do not recommend home deliveries for

17 every child. There's conditions that would

18 contraindicate a home delivery.

19 Q Well, in terms of home deliveries per se,

20 you would rather not have a home delivery; you'd

21 rather have the baby born in the hospital. Isn't

22 that your professional philosophy about the matter?

23 A I believe that home deliveries may be

24 risky. If anything unexpected happens to the baby,

25 it would be easier if the baby is in the hospital

1 setting and we could take measurements right away
2 rather than transfer an infant.

3 Q If in fact there is a home delivery, the
4 difference between a home delivery and a hospital
5 delivery is that in the hospital the baby, after
6 it's born, is put in the nursery with a nurse. If
7 you're at a home delivery, the baby is going to be
8 looked after by someone in the family, maybe more
9 than one. That's an obvious distinction between a
10 hospital and a home delivery, is it not?

11 A Yes, a distinction.

12 Q And so a doctor has to make an
13 assessment, if he elects to do a home delivery,
14 whether he can leave that baby in the home setting
15 after birth, right?

16 A Has to use his judgment, yeah.

17 Q Now, I suppose whether that judgment is
18 good judgment or bad judgment depends upon the
19 history of the case in terms of what the doctor
20 knows about the family, the background, the
21 circumstances, in deciding whether it's reasonable
22 to leave the child in the home setting; would you
23 agree with that?

24 A I would not.

25 Q You have not discussed with Dr. Warden

1 the history of this case, have you?

2 A I have not discussed the complete history
3 of the case.

4 Q You're unaware of the fact, or at least
5 you were unaware of the fact at that time that
6 Grandma Young had seven children and that four were
7 home deliveries?

8 A I was not aware of the fact.

9 Q You were unaware of the fact that grandma
10 had a grandchild that was premature, were you?

11 A No.

12 Q You were unaware of the fact that the
13 birth of the child was uneventful?

14 A I was told later that the child was born
15 by breech.

16 Q Well, the child came quick and easy.
17 Breech was not a complication. You were unaware of
18 that fact?

19 A I was unaware at the time of birth.

20 Q You were unaware that the Apgar was
21 eight?

22 A I learned it.

23 Q But at the time you were unaware?

24 A Yes.

25 Q You were unaware that the doctor stayed

1 in the home some 50 minutes associated with the
2 delivery, talking with the family, weren't you?

3 A I was told by the grandparents that Dr.
4 Warden stayed for half an hour.

5 Q Well, then you were unaware of the fact
6 that he stayed 50 minutes if you were told a half an
7 hour?

8 A If you want to put it this way, that's
9 fine.

10 Q You were unaware of the fact that at
11 least with one person in the home there was a
12 discussion about hospitalization when the baby was
13 born?

14 A I talked to the grandmother and I
15 discussed it -- I don't know. I was unaware.

16 Q Okay. You were unaware of the fact that
17 the doctor had advised the grandmother to call if
18 there was any problem?

19 A I was told by the grandmother that Dr.
20 Warden did not give any specific ideas when the
21 child is sick or getting sick.

22 Q You were unaware of the fact that at 8
23 o'clock, were you not, after the child quit
24 breathing, that when grandma called Dr. Warden's
25 office she left no indication that there was an

1 emergency with the child?

2 A I was told that grandma called Dr.
3 Warden's office.

4 Q But you were not aware of the fact that
5 when she called she got the answering service and
6 left no emergency message?

7 A I was not aware of that.

8 Q You were unaware of the fact that when
9 grandma called Dr. Warden at his home and talked
10 with Mrs. Warden that she left no emergency message?

11 A I assumed that the grandmother called his
12 office and Dr. Warden's home that there was some
13 urgency behind that.

14 Q You made that assumption that -- if in
15 fact the assumption is in error, you were unaware of
16 that fact?

17 A I did not actually ask grandma, "Did you
18 tell about the urgency of the situation?"

19 Q You were unaware of the fact that when a
20 neighbor came over early in the morning and -- well,
21 let me put it this way. You were unaware of the
22 fact that grandma talked to a neighbor by telephone
23 after the baby stopped breathing and the neighbor --

24 MR. WILSON: Your Honor, I'm going to
25 object. That is not in evidence.

1 MR. HANSEN: It's a hypothetical, your
2 Honor. If I can't establish it by evidence, it can
3 be stricken.

4 THE COURT: I think the Rules of Evidence
5 do allow him to put it in. And you feel that you
6 can establish it?

7 MR. HANSEN: Yes, I do, your Honor.

8 THE COURT: Overruled. You may continue.

9 MR. HANSEN: Thank you.

10 Q You were unaware of the fact, Doctor, I
11 take it, that Grandma Young called a friend by the
12 name of Iris Auger after the child stopped breathing
13 at 8 o'clock, did not mention that condition to Iris
14 but talked about the smallness of the child and Iris
15 suggested that the baby be hospitalized but Grandma
16 Young said, "No. I'm going to have the child
17 checked."? You weren't aware of that, either, were
18 you?

19 A No.

20 Q You weren't aware of the fact that during
21 the course of the night, at least on two occasions,
22 grandma unwrapped the child and saw that there was a
23 blue discoloration in the extremities and was of the
24 opinion that that was abnormal but did not attempt
25 to contact the doctor? You were unaware of that,

1 correct?

2 A I did not know that.

3 Q In terms of assessing Dr. Warden's
4 judgment in leaving the child with Grandma Young, in
5 fairness, you would have to know that kind of
6 history in making the judgment, wouldn't you?

7 A Making the judgment of what?

8 Q Of whether Dr. Warden used reasonable
9 judgment in leaving the child with grandma, given
10 the situation. You've got to know the history to
11 make a fair judgment, don't you?

12 A And I believe, as I mentioned before, if
13 I see a child that is so small as this child
14 obviously was, this child -- you can anticipate
15 problems and it's not good judgment to wait until
16 the problems appear. I think anticipation is better
17 and monitoring the child in a better setting. I
18 don't think a setting at home is appropriate to
19 monitor an infant's condition.

20 Q And part of that, Doctor, is based upon
21 the fact that you simply -- and I mentioned this
22 earlier and I don't mean to be redundant -- but you
23 feel that home deliveries are not appropriate
24 because of risks?

25 A Because of risks. Under certain

1 circumstances I think it's okay to do it. European
2 countries have said prenatal care is appropriate and
3 home deliveries are not more risk than hospital
4 deliveries.

5 Q Doctor, in connection with your prior
6 testimony under oath in proceedings in this matter,
7 I asked you the question: "Now, Doctor, in Utah
8 it's not illegal or inappropriate for a mother, if
9 she wishes, to have her baby at home, is it?"
10 Answer: "I don't believe it's illegal."

11 Question: "But you don't recommend it,
12 do you?" Answer: "I would not."

13 A That's what I would say today. I would
14 not recommend it.

15 Q And your testimony today in terms of the
16 judgment, we're talking about of Dr. Warden, is
17 primarily based upon your philosophy that if you
18 have a child at home you take the risk and, under
19 the circumstances, you don't recommend it?

20 A A child that is born prematurely, and
21 there might be some misjudgment on the gestational
22 age initially, but for me history is important, but
23 it's the type of delivery plus how is baby looking
24 at birth.

25 Q It's a function, I suppose, of the doctor

1 using judgment to leave the child with someone in
2 the home on the premise that if the child
3 deteriorates, gets sicker or changes in any way from
4 the time of birth, that the doctor will be called.
5 At the hospital you put the child in the nursery and
6 the nurse is there and responds. That's the
7 difference between a hospital and a home delivery,
8 correct?

9 A No.

10 Q And the assessment as to whether the
11 doctor's judgment in leaving the child with the
12 individual at home depends upon the doctor's
13 assessment as to whether the family at home can look
14 after the child. That requires history and you
15 haven't gotten into the history of this case, have
16 you?

17 A A history is part of the situation but
18 it's evaluation of the baby that bears in
19 afterwards.

20 Q That's right. It's an evaluation of the
21 baby and it depends upon who can look after the baby
22 and monitor. If the baby deteriorates after birth--

23 A If the baby deteriorates, it's probably
24 not too late, but it's not a good situation. It's
25 good to anticipate and monitor the baby, give the

1 baby oxygen. Color is not a good indicator for the
2 situation of the baby.

3 Q Doctor, when this child died and a
4 postmortem was done, the pathologist found on the
5 skull of the child, on the scalp, a bruise that was
6 about three by three centimeters. A couple of
7 questions. First of all, three centimeters would be
8 a little less than an inch and a half, correct?

9 A Three centimeters is a little bit more
10 than an inch.

11 Q Inch and a quarter, perhaps?

12 A About that.

13 Q Now, during your care of the child, as
14 you reflect back on it, can you think of any way the
15 child's head could have been bruised, accounting for
16 how the head was bruised?

17 A Not during that half an hour, 45 minutes
18 of observation.

19 Q So you would have no explanation as to
20 how the bruise occurred?

21 A I would have an explanation, from
22 delivery, but not --

23 Q That's speculation. My question is:
24 While the baby was in your care, it didn't happen?

25 A Right.

1 County Attorneys -- not at the County Attorneys
2 Office but at Joanne's house several months ago?

3 A Yes, I do.

4 Q And do you remember our talking at that
5 time and we talked about when intercourse might have
6 occurred between you and Joanne?

7 A Yes.

8 Q And do you remember you mentioned to me
9 that it might have been February or March of '86?

10 A Yes.

11 Q And let me tell you that Mrs. Ivy Young
12 has testified in this case and she indicated that on
13 the day the baby was born, the day that this
14 football game was played, that you had gone over to
15 the house and told her that maybe your intercourse
16 between you and Joanne had occurred in February
17 instead of March. Do you remember a conversation
18 like that between you and Grandma Young?

19 A I don't.

20 Q If in fact Grandma Young remembers it,
21 then I take it you just don't remember it?

22 A Right.

23 Q You're not denying that it didn't happen,
24 are you?

25 A No, I'm not.

1 Q Now, relative to your conversation with
2 me, you did indicate February or March, didn't you?
3 A Yes.
4 Q Now, you know that when a lady is
5 pregnant that it takes nine months for the pregnancy
6 to develop and grow before she gives birth, correct?
7 A Yeah.
8 Q If in fact you had intercourse in April,
9 then the baby would have been born in January of the
10 next year, the end of the nine months, correct?
11 A Yes.
12 Q With respect to the fact that -- well,
13 did Joanne tell you what Dr. Bitner told her the
14 date of delivery was?
15 A Middle of December.
16 Q And if it were in the middle of December
17 that would suggest that the baby was conceived in
18 March, wouldn't it?
19 A Yes.
20 Q And you don't remember talking to Ivy
21 Young the morning of the delivery or the morning of
22 the day of the delivery telling her that, after you
23 thought about it, maybe intercourse occurred in
24 February?
25 A I don't remember that.

1 Q Do you remember there being a question
2 over at the Young home the morning you went there as
3 to when Joanne became pregnant?

4 A No, I don't.

5 Q You don't even remember that?

6 A No.

7 Q All right. Now, you say, John, that you
8 were going to pay for this baby. The fact of the
9 matter is you made no payment at all, did you?

10 A Yes, I did.

11 Q What did you pay?

12 A I'm not sure.

13 Q Well, can you give me an estimate?

14 A \$300. I don't know.

15 Q Well, who paid that and what was it paid
16 for? You have no idea as to how much you paid?

17 A My mother has the records at home.

18 Q John, do you remember testifying under
19 oath before in this case? Do you recall that?

20 A Yes, I do.

21 Q I have a transcript of that particular
22 testimony, John, and I'm reading from page 263 of
23 the transcript, lines 11 through 14. Let me see if
24 I can refresh your memory.

25 I asked you this question: "Isn't it a

1 fact, John, that Joanne and Grandma Young decided to
2 go from Dr. Bitner to Dr. Warden and have this home
3 delivery because cost was a factor?" And you said,
4 "Yes." Do you remember that?

5 A Yeah.

6 Q On page 264, lines 13 to 16, I asked you
7 a question similar and I said: "Is it fair to say
8 that Joanne and other members of her family, as you
9 recall, felt that they wanted to have the baby at
10 home at least to minimize costs as much as they
11 could?" Your answer is, "Yes."

12 A Yes.

13 Q And that was the case then and that is
14 what you understand to be the case today, correct?

15 A Yes.

16 Q Okay. Now, John, while you were there on
17 the day that Joanne was in labor, you've commented a
18 bit about this blood that you saw. I take it you
19 saw that in the morning after you got there.

20 A Yes, I did.

21 Q It was after that that Joanne went with
22 you to the video store twice to get videos, right?

23 A Not directly, but --

24 Q Well, a little later in the day. Did she
25 get up and get dressed?

Tab C

IN THE FOURTH CIRCUIT COURT
IN AND FOR DAVIS COUNTY, LAYTON DEPARTMENT

-----)	
STATE OF UTAH,	)	CIVIL NO. 871000415
)	
Plaintiff,	)	REPORTER'S TRANSCRIPT,
	)	<u>VOLUME III</u>
vs.)	
	)	FEBRUARY 24, 1988
DAVID WARDEN,)	
	)	REPORTED BY:
Defendant.	)	RENEE L. STACY, CSR, RPR
-----)	

VOLUME III

COPY

BE IT REMEMBERED that commencing on February 22, 1988, through February 26, 1988, the above-entitled matter came on for HEARING in the Fourth Circuit Court in and for Davis County, Layton Department, before the HONORABLE K. ROGER BEAN.

Representing the Plaintiff: MELVIN C. WILSON
BRIAN NAMBA

Representing the Defendant: DARWIN C. HANSEN

* * * *

STACY & ASSOCIATES
717 Boston Building
Salt Lake City, UT 84111

I N D E X

Witness

Dr. Edwin S. Sweeney

Direct Examination by Mr. Namba	3
Voir Dire Examination by Mr. Hansen	18
Direct Examination (Cont.) by Mr. Namba	20
Cross Examination by Mr. Hansen	26
Redirect Examination by Mr. Namba	36

Joanne Young

Direct Examination by Mr. Wilson	38
Cross Examination by Mr. Hansen	95
Redirect Examination by Mr. Wilson	145
Recross Examination by Mr. Hansen	149
Re-redirect Examination by Mr. Wilson	151
Re-recross Examination by Mr. Hansen	152
Re-redirect Examination (Cont.) by Mr. Wilson	153
Re-recross Examination (Cont.) by Mr. Hansen	153

Dr. Ware Branch

Direct Examination by Mr. Namba	155
Voir Dire Examination by Mr. Hansen	158
Direct Examination (Cont.) by Mr. Namba	162
Cross Examination by Mr. Hansen	199
Redirect Examination by Mr. Namba	224

Dr. Gary Chan

Direct Examination by Mr. Namba	234
Cross Examination by Mr. Hansen	257
Redirect Examination by Mr. Namba	275
Recross Examination by Mr. Hansen	279
Re-redirect Examination by Mr. Namba	279

1 A From 1984 till I graduated in May, 1986.

2 Q Joanne, you're acquainted with a young

3 man by the name of John Shaw?

4 A Yes.

5 Q And John is your fiance, is he not?

6 A Yes.

7 Q How long have you and John been going

8 together?

9 A Two years and about three months.

10 Q It's true, is it not, that, Joanne, in

11 1986 you became pregnant; is that correct?

12 A Yes.

13 Q Do you recall approximately when you

14 conceived this child?

15 A Around March time.

16 Q Around March? Can you be a little bit

17 more specific as to whether it was the first part of

18 March or the middle or the latter part of March?

19 A More towards the middle I should think.

20 Q And Joanne, is there anything in your

21 memory relative to when this would have occurred, as

22 to why you think it was around that time period?

23 A Well, my last period was the beginning of

24 March, was the first part of March.

25 Q Now, did you and John have sexual

1 intercourse?

2 A Yes.

3 Q And did you have sexual intercourse more
4 than once, Joanne?

5 A No.

6 Q When did you first suspect that you were
7 pregnant?

8 A Not until April or so, April or May.

9 Q Did you talk to anybody about it at that
10 time?

11 A No.

12 Q Did you talk to John about it?

13 A Yes.

14 Q Did you decide as to what you were going
15 to do about this situation at that point?

16 A No.

17 Q What did you do? Did you continue to
18 wait or what?

19 A Yes.

20 Q When did you finally tell your parents
21 about what was happening?

22 A I think it was in July.

23 Q Who did you go to first?

24 A My mother.

25 Q You discussed it with your mother?

1 A Yeah.

2 Q And did the two of you make any
3 arrangements as a result of that discussion?

4 A We planned on going to a doctor to find
5 out for sure before we told anybody else.

6 Q Did you use any kind of test prior to
7 going to the doctor?

8 A Yes.

9 Q One of these home, I guess, pregnancy
10 tests?

11 A Yes.

12 Q That you can buy at the store. And after
13 using that test you decided to make an appointment
14 with the doctor?

15 A Yes.

16 Q What doctor did you decide to go see at
17 that point?

18 A Dr. Bitner.

19 Q And did you subsequently go see Dr.
20 Bitner?

21 A Yes.

22 Q Do you recall when you went to see Dr.
23 Bitner, Joanne?

24 A Not exactly. It was around that time.

25 Q That time that you told your mother?

1 with John?

2 A Just probably about the same I did with
3 my mom. It was no --

4 Q All right. Now, right about this time
5 that you made the decision to have the home
6 delivery, you sought out a doctor to assist you in
7 the home delivery?

8 A Yeah.

9 Q How did you go about determining who you
10 would have as a doctor?

11 A I don't remember who it was. Somebody
12 told me that Dr. Warden delivered babies at home.

13 Q Did you call and make arrangements to see
14 Dr. Warden?

15 A Yes.

16 Q You personally did that; is that right?

17 A Yes.

18 Q Do you recall when you first went in to
19 see Dr. Warden?

20 A It was --

21 Q I note for the record that you're
22 referring to something that you have there in your
23 hands. What is that?

24 A It's a planner, diary planner.

25 Q It's a calendar?

1 A Yes.

2 Q And did you keep the calendar at that

3 time?

4 A Just briefly.

5 Q But that was in your possession at that

6 time?

7 A Yeah.

8 Q And you made notations in that calendar

9 from time to time?

10 A Yes.

11 Q Does it contain notations relative to

12 your visits to Dr. Warden?

13 A Just when I had to go.

14 Q When was that, the first one?

15 A The first one was September, Monday, the

16 1st of September on a Monday, but it was canceled

17 and the first visit I actually saw him was on

18 September the 8th.

19 Q On September the 8th?

20 A Uh-huh.

21 Q And upon arriving, where did you go?

22 A We went to his surgery in Kaysville.

23 Q Pardon?

24 A We went to his surgery in Kaysville.

25 Q His clinic?

1 Q All right. Now, you went to Dr. Bitner
2 twice. You had the followup appointment for an
3 ultrasound and then I believe you stated that you
4 testified that you made the decision that you wanted
5 a home delivery, correct?

6 A Yes.

7 Q And the reason for that was that you felt
8 embarrassed. You wanted to keep things private and
9 that's the reason you chose a home delivery?

10 A Yes.

11 Q Now, Joanne, it's true, though, that
12 expense was a consideration, was it not?

13 A A minor consideration, yes.

14 Q Now, Joanne, you have given statements in
15 this case to other people who have asked you
16 questions as well as you have testified under oath
17 in these proceedings earlier, haven't you?

18 A Yes.

19 Q Let me refer, first of all, to a
20 statement which happened before. I believe you were
21 being interviewed by a police officer whose name was
22 Mike Lee.

23 A Yes.

24 Q And I believe that there was a lady with
25 him by the name of Christine Godnick. Do you

1 remember when they spoke to you?

2 A I don't remember when, but I remember --

3 Q But you remember talking to them?

4 A Yes.

5 Q I have a copy of that record and let me
6 just read to you a question and your answer as it
7 relates to expense.

8 Officer Lee asked you -- and this is page
9 two, counsel. Officer Lee asked you: "The first
10 time you went to see Dr. Bitner, did he tell you to
11 come back after that? Did you make another
12 appointment to go see him again?"

13 In this particular report, Joanne, says:
14 "Yeah, we made another appointment. We went in and
15 saw him and he did another examination, but then it
16 come to be getting so expensive that there was no
17 way we could meet the costs of it."

18 Do you remember telling officer Lee that?

19 A Yes.

20 Q So I take it when you first -- at least
21 after you went back the second time, you had all
22 these tests, the expense was becoming considerable
23 and, as you indicate, there was no way you felt you
24 could meet it, correct?

25 A That's correct, but I know my mom's -- we

1 had discussed that the expense had nothing to do
2 with it. It was my decision, and I just felt guilty
3 that I had to put my parents to so much expense.

4 Q At least in your mind the expense became
5 a very -- it was a consideration?

6 A Yes.

7 Q When you testified under oath in this
8 particular case early on -- let me just again refer
9 you to the transcript, and I'm reading from page 57,
10 lines 6 through 11, and a question was asked of you:
11 "You didn't feel that your mom or dad could afford
12 that, did you?" And we're talking about Dr.
13 Bitner's bill. Your answer: "No."

14 Question: "And you weren't employed and
15 you couldn't afford it, either, could you?" "No."

16 Then down on line 22 you say -- or the
17 question is: "On the way home from Dr. Bitner's
18 office after that first visit, you and your mom
19 talked about the cost and about that it would be
20 difficult to pay for it; isn't that true?" Answer:
21 "Yes."

22 Question: "And both you and your mom
23 were concerned about the costs, weren't you?"

24 Answer: "Yes."

25 Now, that was your testimony earlier

1 under oath and you're not changing that testimony
2 today, are you?

3 A No.

4 Q Now, Joanne, after you saw -- well,
5 during the first time that you saw Dr. Warden, you
6 called and made the appointment. You went in on the
7 8th of September and you indicated -- well, strike
8 that.

9 Your mother was with you, wasn't she?

10 A Yes.

11 Q And you and your mom talked to Dr. Warden
12 and told him that you wanted a home delivery,
13 correct?

14 A Yes.

15 Q And in connection with having a home
16 delivery, the doctor asked you a little bit about
17 the background of the family, where you were from,
18 how many children and that sort of thing, didn't he?

19 A Just in general conversation, yes.

20 Q Do you remember the doctor talking to
21 your mother about her having children at home while
22 she was in England?

23 A I think so, yes.

24 Q Do you remember the doctor talking to
25 you, Joanne, about what knowledge you had in terms

1 you felt like there were things that needed to be
2 done that hadn't been done, did you?

3 A No

4 Q All right. Now, Joanne, let me talk to
5 you a little bit about what happened on November the
6 7th. You wake up in the morning and you have what
7 you describe as cramps and you have some bleeding.

8 Joanne, you indicated, I believe, in
9 direct testimony when Mr. Wilson was asking you
10 questions, that the bleeding was consistent with a
11 medium period; is that right?

12 A Yes.

13 Q Now, with reference to that particular
14 condition, during the night -- and again I know this
15 is sensitive and I don't want to embarrass you, but
16 I need to ask the question. During the night I take
17 it you were not wearing a sanitary napkin, were you?

18 A No.

19 Q So when you woke up in the morning and
20 you didn't have the napkin, then that's where you
21 noticed the bleeding, correct?

22 A Yes.

23 Q And then there was some soiling of your
24 nightgown?

25 A Yes.

1 Q Right?

2 A (Witness nods.)

3 Q And I think in terms of any soiling of

4 the bedding on the bed, there was just a tiny bit;

5 isn't that correct?

6 A Yes. A little bit.

7 Q The size of a dime, maybe?

8 A (Witness nods.)

9 Q So during the course of the night when

10 you woke up, in the context of this bleeding, there

11 was some soiling of your nightgown and then a spot

12 on the bed that was about the size of a dime; is

13 that right?

14 A Yes.

15 Q Then I take it you get up and you tell

16 your mother about that and she calls the doctor and

17 then you put on a pad, right?

18 A Yes.

19 Q Okay. Now, then after she calls the

20 doctor, it's between then and the next call at 1

21 o'clock that John comes over and you have the

22 conversation about conception occurring maybe in

23 February as opposed to March?

24 A Yes.

25 Q Now, you testified that along about

1 noontime, or at least I believe you did, and if I'm
2 wrong, please correct me, that the bleeding started
3 to ease a bit. Do you remember that?

4 A Yes.

5 Q As a matter of fact, Joanne, by noon
6 hadn't the bleeding stopped?

7 A Not that I remember.

8 Q Okay. And again maybe I can help refresh
9 your memory. Let me refer to the transcript of your
10 testimony under oath in prior proceedings. And I'm
11 going to start reading on page 63, for the benefit
12 of counsel, line 23 of the transcript of the prior
13 matter.

14 My question to you is: "And you applied
15 a sanitary napkin but later in the morning the
16 bleeding stopped, didn't it?" Your answer is,
17 "Yes."

18 Question: "And you didn't bleed anymore
19 during the time until just at the time of the
20 delivery; is that correct?" Answer: "Yes."

21 Question: "And the bleeding stopped
22 along about 10:00 or 10:30 in the morning?" Answer:
23 "No. It was more like -- it was more around 12:00."

24 Question: "Oh, about noon?" Answer:
25 "Yes."

1 Question: "And you had no more bleeding
2 after that?" Answer: "Not that I remember."

3 Is your testimony today any different
4 than it was when you gave your testimony in these
5 proceedings earlier, Joanne?

6 A No. I just honestly don't remember
7 exactly whether it stopped or --

8 Q But in any event, the bleeding stopped
9 somewhere around the middle of the day; is that
10 true?

11 A It eased off. I don't remember whether
12 it stopped.

13 Q Well, in this particular testimony that
14 you gave before, you said it stopped. Are you
15 changing your testimony now?

16 A No.

17 Q Then your best recollection is that it
18 stopped sometime around noon or the middle of the
19 day; is that correct?

20 A As I remember, yes.

21 Q And then it was after that, after the
22 bleeding stopped that you and John watched a video
23 and went to the video store to select the video you
24 wanted to see; is that true?

25 A No. It was earlier in the morning.

1 that subject.

2 A Yes.

3 Q Now, in terms of any additional
4 discussion, either you didn't hear it or it didn't
5 occur; is that your position?

6 A Yes.

7 Q All right. So I take it your testimony
8 is that if there were additional discussion about
9 hospitalizing the baby, you can't remember hearing
10 it?

11 A Yes.

12 Q Now, you indicated that Dr. Warden
13 instructed you to nurse the baby, did he not?

14 A Yes.

15 Q And as part of that instruction, did he
16 not bring the baby close to you and hold it to your
17 breast, indeed the nipple, to see if the baby would
18 either lick or with his mouth attach to the nipple?

19 A No.

20 Q You say that never happened?

21 A No, it never happened.

22 Q You did not want to nurse, I take it.

23 A No.

24 Q In connection with nursing, did you ever
25 nurse the baby during the night?

1 A No.

2 Q Did you nurse it after Dr. Warden left?

3 A No.

4 Q Did you nurse it in the morning?

5 A No.

6 Q Did you feed the baby a bottle at night?

7 A We tried to that night and again the next

8 morning.

9 Q When did you try to feed it at night?

10 A Just before I went to bed.

11 Q And that would be about what time?

12 A Around 11:30, 12 o'clock.

13 Q And the child wouldn't take the bottle?

14 A No.

15 Q When did you try to feed the child the

16 bottle the next morning?

17 A Probably around 6 o'clock or so.

18 Q And would the child take the bottle then?

19 A No.

20 Q When the child would not take the bottle

21 on those two occasions, did you try to nurse the

22 child?

23 A No.

24 Q Is there a reason you didn't try to nurse

25 the child in light of the doctor's instructions?

1 A No.

2 Q You just elected to not follow them and
3 feed the baby the bottle?

4 A We just -- that was all we tried while he
5 was still little.

6 Q At night when the child would not take
7 the bottle and you didn't attempt to nurse, were you
8 worried whether the child was getting enough
9 nourishment as a newborn?

10 A Not really.

11 Q Did you try to feed the child any kind of
12 water at all as opposed to the formula?

13 A I didn't. My mom I think did later on in
14 the night.

15 Q Did you ever -- did you worry about the
16 child not getting any sort of formula or liquid
17 during the night?

18 A No, because it was my understanding that
19 newborns don't eat right away.

20 Q I see. You didn't call and talk with the
21 doctor, I take it, during the night or the morning
22 hours about feeding the baby because it wouldn't
23 take the bottle?

24 A No.

25 Q Just so it's clear in my mind, is it

1 correct to say, Joanne, that during the night the
2 child had no liquid at all?

3 A Yes.

4 Q Now, when Dr. Warden spoke to you about
5 nursing the baby, isn't it a fact that on that
6 occasion he told you that with a baby that's born
7 early that it's better to nurse the baby than to
8 feed the baby a bottle?

9 A Yes.

10 Q And in that context, didn't he also
11 indicate to you that with a newborn you've got to be
12 concerned about the warmth of the baby and that if
13 you nurse the baby you can hold the baby to your
14 skin and then you've got the baby's skin to your
15 skin and that helps the baby maintain body
16 temperature?

17 A Not that I remember.

18 Q You don't remember him discussing that
19 with you?

20 A No.

21 Q Let me just again, Joanne, see if I can
22 refresh your memory just a bit. I'm reading from
23 page 99 in connection with prior testimony in these
24 proceedings.

25 The question that I asked you was: "Dr.

1 Warden indicated to you when he was talking to you
2 about nursing to keep the baby close to your body so
3 it will be warm while he was discussing the nursing
4 with you?" Your answer is, "Yes."

5 Question: "You remember that
6 discussion?" Answer: "Yes."

7 Is your testimony today any different
8 than it was before?

9 A No, just that today I don't honestly
10 remember. It was a long time ago.

11 Q Having had this read to you then, would
12 it refresh your memory so you can now say, yeah, I
13 do recall he talked to me about holding the baby
14 close to keep it warm?

15 A Yes.

16 Q So he gave you instruction then, I take
17 it, about nursing; he gave you instruction about
18 keeping the baby warm? At least those two things
19 you remember?

20 A Yes.

21 Q Any other instruction you do not recall,
22 if in fact it were given?

23 A Not really.

24 Q Now, you indicated that -- well, let me
25 say this. You indicated in your testimony that Dr.

1 Warden had said something to your mother along the
2 line that she should watch the baby and then, if
3 anything happens, to give him a call, right?

4 A No. He just said watch the baby through
5 the night.

6 Q Well, Dr. Warden stayed for awhile to
7 check the breathing of the baby, did he not?

8 A He stayed for awhile. He said he was
9 going to see how the baby was doing.

10 Q You understood that to include the
11 breathing of the baby in light of this sound that
12 you've described, did you not?

13 A I guess so, yes.

14 Q So when I say "check the baby," that's in
15 effect what you understood he was doing? He was
16 staying to watch the baby to make sure the breathing
17 was okay at the time, right?

18 A Yes.

19 Q And then you remember in that regard that
20 he also gave you instructions about trying to keep
21 the baby warm, correct?

22 A Yes.

23 Q So when the doctor said to your mom and
24 you heard him say this, Now, Ivy, or Mrs. Young, or
25 whatever, you watch the baby during the night and

1 call if there's a problem, you understood the doctor
2 to be referring to breathing, to keeping the baby
3 warm, didn't you?

4 A He never said to call.

5 Q Well, you certainly understood if there
6 was a problem you were supposed to call the doctor?

7 A Yes.

8 Q I mean, he didn't have to tell you if
9 there's a problem call me. You knew if there was a
10 problem the thing to do was to call the doctor,
11 correct?

12 A Yes.

13 Q And your mother had called the doctor
14 four times the day before?

15 A Yes.

16 Q In connection with your labor, hadn't
17 she?

18 A Yes.

19 Q And in that regard, in terms of what the
20 problem was, you understood that that related to
21 breathing and this sound that you mentioned, also
22 the warmth of the baby, didn't you?

23 A I guess so.

24 Q Okay. Now, in your class in school, as a
25 matter of fact, you had been taught that a newborn

1 baby needs to maintain its body temperature? You'd
2 been taught that, hadn't you?

3 A I guess so.

4 Q And you understood that it was important
5 for a newborn, whether it's a premature newborn or
6 not, that it needs to maintain its body temperature?
7 You understood that, didn't you?

8 A Yes.

9 Q You understood that without Dr. Warden
10 telling you, didn't you?

11 A Yes.

12 Q Now, so when Dr. Warden explained to you
13 during the period of your nursing to keep the baby
14 close to you and keep it warm, that didn't surprise
15 you because you recognized that would be a normal
16 thing to do with a newborn, correct?

17 A Yes.

18 Q You had been taught that in school?

19 A It was common sense.

20 Q It is. It's common sense. Now, I
21 understand that during the night, somewhere around 2
22 o'clock in the morning, that you woke up. You were
23 still in the bedroom where the baby was born, if I
24 remember your testimony. You touched the baby,
25 touched his face, it seemed cold to you. You were

1 there with your mother and you decided to move the
2 baby into your brother's bedroom right next door?
3 A Yes.
4 Q Is that what happened?
5 A Yes.
6 Q Now, the fact that you understood it was
7 important to keep the baby warm, that troubled you,
8 did it not? Did it not cause you some concern at 2
9 o'clock in the morning?
10 A Yes. That's why we changed to the warmer
11 room.
12 Q But you didn't feel inclined at that time
13 to call Dr. Warden?
14 A No.
15 Q And your mother didn't feel inclined to
16 call him?
17 A No, not as far as I know.
18 Q Did you and your mother talk to each
19 other about calling Dr. Warden on this occasion but
20 then decided not to?
21 A Not that I remember.
22 Q You just didn't even discuss it?
23 A No.
24 Q But at least in your mind the fact that
25 he was cold caused you concern?

1 A Yes.

2 Q And then you hold the baby on the couch
3 until about when, 7:30?

4 A Yeah, around there.

5 Q Or 8 o'clock?

6 A (Witness nods.)

7 Q Now, as I remember your testimony, from
8 6:30 to 8:00, you became even more concerned about
9 the health of the baby, didn't you?

10 A Yes.

11 Q And so did your mom?

12 A Yes.

13 Q Between 6:30 to 8 o'clock you didn't call
14 Dr. Warden, did you?

15 A No.

16 Q And your mom didn't either, did she?

17 A Not to my knowledge.

18 Q What additional events happened between
19 6:30 and 8 o'clock, Joanne, that made your concern
20 even greater than it was at 4:30 when you saw his
21 hands were kind of blue?

22 A I saw his hands were blue about 5:30,
23 quarter to 6:00.

24 Q Oh, I see. Was there anything else that
25 made you more concerned at 5:30 or quarter to 6:00?

1 MR. WILSON: Nothing further, your Honor.

2 THE COURT: You may step down. Thank
3 you.

4 MR. NAMBA: We'll call Dr. Branch, your
5 Honor.

6 DR. WARE BRANCH

7 called as a witness and sworn was examined and
8 testified as follows:

9 DIRECT EXAMINATION

10 BY MR. NAMBA:

11 Q State your name and your occupation,
12 please.

13 A My name is Ware Branch and I'm a
14 physician. Obstetrician-gynecologist.

15 Q Where do you work?

16 A I work at the University of Utah.

17 Q Tell the jury what your educational
18 background is.

19 A My educational background is that after
20 finishing college I went to medical school, the
21 Medical College of Virginia in Richmond, Virginia,
22 did a residency in obstetrics and gynecology and
23 moved here to do a Fellowship in maternal-fetal
24 medicine specializing in high risk pregnancy care
25 and I've practiced at that hospital for two and a

1 Q Anything else that you used?

2 A I had some records from Dr. Bitner, which

3 were brief, but present.

4 Q The medical medical records of his --

5 A That's correct.

6 Q Anything else that you would have used?

7 A Well, those are the things I used, yes.

8 Q All right. Based upon the things that

9 you were provided and that you studied at that time,

10 did you come to a conclusion as to whether the

11 treatment that was given by Dr. Warden in this case

12 met with the standards of care in this community?

13 MR. HANSEN: Your Honor, I would like to

14 just briefly voir dire for the record. May I?

15 THE COURT: All right. Yes, you may.

16 MR. HANSEN: Thank you.

17 VOIR DIRE EXAMINATION

18 BY MR. HANSEN:

19 Q Dr. Branch --

20 A What is the turn of events here? May I

21 understand those?

22 Q Yes. I'm the defense attorney.

23 A I recognize that, but --

24 Q I'm voir diring.

25 A Voir diring?

1 THE COURT: He requests the Court's --
2 Excuse me for interrupting, Mr. Hansen. He requests
3 the Court's permission to ask some preliminary
4 questions about your ability to answer the questions
5 that are foundation for your answering the questions
6 that counsel on direct examination was about to ask,
7 and the court has given that permission.

8 THE WITNESS: That's fine. I just didn't
9 understand the turn of events.

10 MR. HANSEN: Thank you, your Honor.

11 THE WITNESS: Thanks.

12 Q (By Mr. Hansen) Dr. Ware, in terms of
13 your expertise, your expertise is, of course,
14 obstetrics?

15 A True.

16 Q And you teach that at the University of
17 Utah Medical Center?

18 A That's correct; yes, sir.

19 Q To students?

20 A And residents.

21 Q And residents. And in terms of the
22 residents, it is not only lecture but it's
23 supervising on-hands treatment?

24 A No question. Yes, sir.

25 Q And that supervising and that on-hands

1 treatment involves all aspects of obstetrical care,
2 high risk primarily?

3 A High risk primarily, but all aspects of
4 obstetrical care, that's correct.

5 Q And in every case your supervision of the
6 residents over whom you have responsibility are
7 contemplated to be within a hospital setting?

8 A Or a clinic setting, one of the two,
9 yeah.

10 Q Or a clinic setting?

11 A Yes, that's correct.

12 Q You do not teach specifically medical
13 care relative to a physician who voluntarily handles
14 a delivery at home, do you?

15 A No, sir, I do not.

16 Q And you do not teach your medical
17 students about that matter, either, do you?

18 A No, sir.

19 Q And your on-hands supervising and
20 training of residents does not include that either,
21 does it?

22 A That's correct.

23 Q As a matter of fact, it would be true to
24 say that in terms of the obstetrical specialty in
25 the field of medicine that home deliveries are not

1 recommended?

2 A That's correct.

3 Q And for that reason in your profession at
4 the University of Utah and your specialty, you
5 simply don't teach that aspect of medicine, do you?

6 A That's correct. That's fair to say.

7 MR. HANSEN: Your Honor, I would move
8 that this witness then, in light of the fact that
9 this trial deals with the standards of care in a
10 home delivery, that this doctor, based upon his
11 testimony, is not in a position to testify as to
12 what the standards are for two reasons. Number one,
13 he doesn't teach them; number two, he doesn't
14 practice them; number three, his professional
15 philosophy is they're not recommended. Therefore,
16 number four, he's of a different school of medicine
17 than a doctor who handles obstetrical care in the
18 home and I think the law is -- and we have submitted
19 this to the court in a trial memorandum -- that
20 unless the school is the same, expert testimony is
21 not appropriate; therefore, I move that, in terms of
22 this doctor, although I acknowledge he's highly
23 trained, does not have the expertise to testify as
24 to the standard of care or make any opinions as to
25 whether the standard was adhered to, given the facts

1 of this case.

2 THE COURT: Thank you. Mr. Namba?

3 MR. NAMBA: May I ask a few other
4 questions of the doctor?

5 THE COURT: Yes, you may. Go ahead.

6 DIRECT EXAMINATION (Continued)

7 BY MR. NAMBA:

8 Q Dr. Branch, is there any specialty or
9 certification in the area of home delivery of
10 babies?

11 A That I'm aware of, there's none. I can't
12 speak for every state in the union.

13 Q In this state is there?

14 A None that I'm aware of.

15 Q And the students that you teach, are they
16 all obstetricians or prospective obstetrician-
17 gynecologists?

18 A Well, when teaching medical students
19 about medicine, they do what we call rotations and
20 so we spend some time with them teaching principles
21 of obstetrics and then they would rotate off to,
22 say, learn about principles of surgery or internal
23 medicine or so forth. Residents, however, are in a
24 four year training program, having graduated already
25 from medical school. You see, they're in a four

1 abnormalities or complications of pregnancy noted in
2 the field of obstetrics, one could consider that as
3 being a low risk pregnancy, correct?

4 A Fair to say.

5 Q Now, in the letter it goes on, and on
6 page two it indicates, dealing now with delivery,
7 "There was no" -- and I'm on page two in the middle
8 paragraph.

9 A I'm with you.

10 Q "There was no indication from the
11 available reports that the delivery was particularly
12 difficult or traumatic."

13 A That's correct.

14 Q And based upon your evaluation of those
15 records, your opinion was then and is today, based
16 upon a reasonable degree of medical certainty, that
17 the delivery was not particularly difficult or
18 traumatic?

19 A That's correct.

20 Q All right, sir. Now, in connection with
21 this -- well, let me say this. Let's go to page
22 three and let me ask you one other question and then
23 we'll come back to the leading issue.

24 On page three, the top paragraph, again
25 you've reviewed all these documents, done it in, I

1 would suspect, in your own office, wherever you
2 reviewed them --

3 A Yes, sir.

4 Q At the University of Utah Medical Center?

5 A That's correct.

6 Q Okay. You sit there and you read all of
7 this and then you give your opinion in the letter?

8 A I did.

9 Q And on page three, it indicates,
10 "Fortunately" -- you've got the initials "JEY." I
11 think that means JoAnne E. Young, the mother?

12 A Yes, that's to indicate the mother.

13 Q "Fortunately," -- I'm going to use the
14 term "the mother." "Fortunately the mother suffered
15 no apparent damage due to the vaginal bleeding,"
16 right?

17 A That's what I've written, yes, sir.

18 Q Now, based on the records, your
19 conclusion was that the mother suffered no damage
20 from vaginal bleeding?

21 A That's my conclusion from the records.

22 Q What that means then is this, Doctor, as
23 I understand it, and you correct me if I'm wrong.
24 You mentioned that bleeding in the third trimester
25 could be very ominous. It could suggest placenta

1 previa, placenta abruptio, and they were the two
2 major areas?

3 A Yes.

4 Q In light of the fact that this pregnancy
5 was without difficulty --

6 A Right.

7 A -- and, using your term, or any trauma,
8 that implies, based on the records, there was no
9 placenta previa?

10 A It implies that, yes, sir.

11 Q And there was no placenta abruptio?

12 A Yes, sir.

13 Q And in that regard, the bleeding that
14 occurred then earlier, on November the 7th, was not
15 an ominous sign that those events were going to
16 occur?

17 A How would you -- would you like a yes or
18 no answer?

19 Q Yell, yeah. In other words, if you look
20 at the fact, Doctor, that there was no placenta
21 accident -- let me just use that, no placenta
22 accident, all right? -- that means that the
23 bleeding earlier in the day was not an indication of
24 those kind of ominous problems?

25 A Retrospectively, yes.

1 Q Exactly, retrospectively.

2 A Yes.

3 Q Now, let's talk about judgments in the
4 medical profession. When you and I talked earlier
5 in proceedings of this particular case we talked
6 about the fact that in the medical profession the
7 very heart of what a doctor does is exercise
8 judgment.

9 A I recall that, yes, sir.

10 Q And that would be true?

11 A It seems to me that it is more judgment
12 than there is anything else.

13 Q Exactly. And when a doctor is exercising
14 judgment, I guess there's certain things he's going
15 to look at. He will look at symptoms, correct?

16 A Yes, sir.

17 Q He will be sensitive to the history of
18 the patient?

19 A Correct.

20 Q He will be sensitive to information that
21 the family gives him by way of history at the moment
22 the symptoms manifest themselves, if a review of
23 history at that point is indicated. He will look at
24 the desires and the original intent of the family in
25 terms of the medical care, will he not?

1 cautions becomes a question of ethics, becomes a
2 question of doctor's judgment, becomes a question of
3 some basic disagreement in the profession; is that a
4 fair statement?

5 A I think it's a fair statement about life
6 as well as about medicine, yes, sir.

7 Q Okay. Now, in terms of your disagreement
8 in this whole scenario, the point of disagreement
9 that you have is the fact that you would say the
10 doctor ought not to have left the child with grandma
11 under the hypothetical conditions that I've
12 described?

13 A That is my point of disagreement, yes,
14 sir.

15 Q Other than that, your point of
16 disagreement is not of consequence?

17 A Because retrospectively things worked
18 out, my point of disagreement, as you pointed out
19 for us all, is of limited importance to the case.

20 Q And what we have in connection with this
21 particular matter then is a situation where this
22 doctor is attending a home delivery situation --

23 A Correct.

24 Q -- and that is an environment and a
25 circumstance which, in effect, number one, you have

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DR. GARY CHAN

called as a witness and sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. NAMBA:

Q State your name and your occupation.

A Gary M. Chan. I'm a staff neonatologist-pediatrician at the University Hospital in Salt Lake City.

Q First of all, would you explain to the jury what a neonatologist is?

A Neonatologist is subspecialty of pediatrics which deals with the first two months of life, dealing essentially with high risk infants.

Q To be certified as a neonatologist then are you certified first as a pediatrician and then as a neonatologist?

A Yes.

Q So does it require additional education beyond the pediatric --

A Yes. Pediatric training is three years and neonatology is approximately three years also, extra.

Q What are your responsibilities at the University of Utah?

1 have.

2 THE COURT: Thank you. You may cross
3 examine.

4 MR. HANSEN: Okay. Thank you, your
5 Honor.

6 CROSS-EXAMINATION

7 BY MR. HANSEN:

8 Q Dr. Chan, my name is Darwin Hansen and we
9 met earlier in this case, I think. Do you recall?

10 A Yes.

11 Q Dr. Chan, to begin with, I'm interested
12 in some statistics that you've mentioned. As I
13 understand it, based on this hypothetical of a child
14 33 to 34 weeks, you testified that a child that is
15 born at that point in the gestation period, in the
16 pregnancy period, would have a less than 25 percent
17 chance of having hyaline membrane?

18 A Uh-huh.

19 Q So out of four children that are born at
20 33, 34 weeks, one in four may have hyaline membrane?

21 A That's right.

22 Q Three out of four will not?

23 A Will not. The majority of them will not
24 at this gestational age, and this is looking at
25 national.

1 Q I understand. Now, with respect to the
2 one child, or the 25 percent, let's say, that does
3 develop symptomatology for hyaline membrane, I think
4 I understood your testimony to be that if that child
5 that does develop the symptoms goes untreated that,
6 in terms of survival, I think you said ten, maybe
7 fifteen percent would not survive?

8 A That's right.

9 Q So of the one in four that may develop
10 symptomatology, five percent of those, even without
11 treatment -- well, let me put it this way.
12 Ninety-five percent of those without treatment may
13 survive?

14 A May survive.

15 Q So statistically, I take it that 95
16 percent of 25 percent -- what is that, if you're a
17 mathematician?

18 A I don't know.

19 Q It's something like -- I think the judge
20 has his calculator. Your Honor, help me out. What
21 is .95 times 25?

22 A Someone said 2 percent. That sounds
23 pretty close.

24 Q Two percent?

25 A I guess the message is it's very unusual

1 and rare to lose a baby at this gestation and this
2 birth weight from hyaline membrane disease.

3 Q Okay. But in terms of -- what I'm trying
4 to get to is this. I'm trying to talk about
5 treatment versus nontreatment. What we're really
6 saying is 2 percent, that is, two babies out of a
7 hundred untreated at this gestational age will die
8 of hyaline membrane?

9 A The statistics that we derive this from,
10 Mr. Hansen, is from hospital statistics. I know of
11 no statistics of home deliveries of mortality,
12 morbidity of premature babies, and so I would think,
13 from my judgment, that that statistic would be even
14 worse.

15 We're now talking about 2 percent, or
16 whatever the number comes out, but I would assume
17 that may be even higher because, unfortunately, no
18 one reports a death of a premature baby home
19 delivery.

20 Q Let's talk about the statistics for a
21 minute and make sure that we're comparing apples
22 with apples, okay?

23 A Yes.

24 Q I'm talking about children who develop
25 hyaline membrane that go untreated. Now, I

1 understand those are the statistics you gave.

2 A Uh-huh.

3 Q Untreated could be in the hospital or it
4 could be -- it doesn't matter where it is, I
5 suggest. The bottom line is that the child is
6 untreated; therefore, if you have hyaline membrane,
7 33 to 34 weeks and it's untreated, 2 percent, two
8 out of a hundred may die?

9 A We're not talking apples and oranges. If
10 the baby is in the hospital and it's -- see, there's
11 no study where you say this baby will be treated and
12 this baby will not be treated. I'm giving you the
13 statistics of all babies in the hospital being
14 watched and there's some babies you watch carefully
15 and they don't need any treatment, don't require
16 treatment, and those babies -- and if you say yes,
17 if you're looking at those babies that are not
18 treated, very few of them will die.

19 Q Okay. Let's put it this way and let's
20 take the hospital statistics. The babies are in the
21 hospital. Four percent of them, if they're
22 premature, will develop hyaline membrane at this
23 gestational age. Of those 4 percent, 95 percent --

24 THE COURT: You mean 4 percent or one
25 fourth?

1 MR. HANSEN: Well, one fourth.

2 Twenty-five percent.

3 Q The 2 percent out of a hundred that may
4 pass away, those 2 percent are the babies in the
5 hospital that are observed and not treated may die?

6 A Uh-huh.

7 Q Okay. You've got observation in a
8 hospital, untreated, 2 percent may die. Now, let me
9 go a step further. If I understand -- you mentioned
10 that respiratory distress syndrome is a progressive
11 type disease?

12 A Yes.

13 Q And as I understand, medically what that
14 means is that the symptomatology, that is, the
15 manifestations of the disease as it progresses
16 becomes -- it changes, becomes worse and worse in
17 the sense of the well being of the child, correct?

18 A Uh-huh.

19 Q And part of that symptomatology, Doctor,
20 that I understand you have made reference to, would
21 be respiratory or breathing problems. Those
22 breathing problems would manifest themselves perhaps
23 by grunting, secondly by labored breathing. I think
24 you described labored breathing as increased --
25 rapid breathing?

1 intubate and preserve the child in a class three
2 hospital, the least able to handle the problem that
3 you've described. Now, my question, Doctor --

4 THE COURT: Excuse me, for the record,
5 that would be class one, I think.

6 MR. HANSEN: Oh, class one. Okay.

7 Q My question is this, Doctor. You were
8 asked if the child could survive with emergency
9 intervention at ten hours and you said, "Well,
10 maybe. It's doubtful." In effect what you're
11 saying is "I'm not sure."?

12 A That's right.

13 Q Now, you gave statements in this case
14 earlier, Doctor, under oath, as I recall, and we had
15 some discussion about this same issue. Let me just
16 refer to the testimony and I'm going to read some
17 questions I asked you and your responses.

18 I'm starting on page 190 and I'm starting
19 at the bottom of the page on line 25 and I ask you:
20 "Now, Doctor, this baby passed away, instead of 12
21 hours after birth, approximately 13 hours, between
22 12 and 13 hours after birth. Given the factors that
23 you've talked about" -- let me represent to you
24 they're similar to the ones that we've talked about
25 today -- "if this child deteriorated because of the

1 respiratory distress syndrome and the doctor were
2 called and the child were then taken to the hospital
3 or to wherever the child could receive treatment,
4 would you think within the first or the second hour
5 the child could receive treatment and his life
6 preserved?" Answer: "Yes."

7 Question: "What about the third to the
8 fifth hour?" Answer: "Yes."

9 Question: "What about the fifth to say
10 the ninth hour?" Answer: "Yes."

11 Question: "What about the ninth to the
12 twelfth hour?" Answer: "Can still receive
13 treatment, yes."

14 With reference to your answer, "can still
15 receive treatment, yes," presumably implicit in that
16 answer is that treatment will not be given unless
17 there's a fair medical likelihood that life can be
18 preserved; would that be a fair statement?

19 A Yes.

20 Q So when you say about the ninth to the
21 twelfth hour -- or when I ask you that question and
22 you say "can still receive treatment, yes," the
23 implication is that up to the twelfth hour there's a
24 reasonable likelihood with emergency medical
25 intervention that the life of this child can be

1 preserved, correct?

2 A Correct. I'd like to add a comment to
3 that, and it's my own basic philosophy as a
4 neonatologist and pediatrician. I will try,
5 especially on a baby at this gestation, this size,
6 all out, so even on a moribund baby coming into the
7 emergency room or into the intensive care, our staff
8 has been trained not to waste time but to go all out
9 and to worry about the facts later and so I think
10 most of the nurses and doctors in intensive care
11 will try therapy on a baby to preserve life.

12 Q And, Doctor, that approach and that
13 attitude I think is what patients would want, not
14 only from you but from any physician that is faced
15 with a terrible emergency kind of situation.

16 A Yes.

17 Q Now, Doctor, with reference to home
18 deliveries -- and let's talk philosophically now a
19 bit in the medical field. With reference to home
20 deliveries, as a neonatologist, it's my
21 understanding that your professional philosophical
22 view is that they should not occur?

23 A That's, to me, a naive approach to the
24 problem because it does occur and I think home
25 deliveries are appropriate in many circumstances.

1 Q And with respect to those circumstances
2 -- well, let me say this. In your particular field
3 as a neonatologist caring for the newborn, are you
4 familiar with the fact that those who specialize in
5 obstetrics, the board certified OB-GYN people, would
6 it be fair to say that generally they will not
7 deliver a baby at home?

8 A I think that's a fair statement.

9 Q And it's a fair statement, is it, that at
10 your medical school -- if you know, and if you
11 don't, tell me -- in the curriculum of the OB-GYN
12 people, whether it's the internship or the
13 residency, that there is no instruction nor any
14 hands on experience nor any effort to give training
15 to those doctors with respect to home deliveries?

16 A There is none.

17 Q And so under the circumstances, if a
18 mother elects a home delivery, she has to find a
19 physician that, if you will, bucks the system, or
20 secondly, use a midwife that may not be medically
21 trained like a physician or, heaven forbid, to have
22 the husband or someone else try to help deliver the
23 baby; is that a correct statement?

24 A That's correct.

25 Q Therefore, Doctor, I suppose it would be

1 A Sure.

2 Q And that happens in home deliveries,
3 doesn't it?

4 A And I think it happens in the hospital
5 deliveries. I think the consumer can now tell the
6 doctor what type of delivery they would desire, if
7 they want one without medications or whatever, if
8 they want the family there. The medical profession
9 is becoming more flexible.

10 Q And if in fact a doctor agrees, as I've
11 indicated, to do a home delivery, notwithstanding
12 what the OB-GYN professionals feel, if the doctor
13 agrees to do a home delivery, given the feeling of
14 the mother wanting a home delivery, then there is a
15 certain response the doctor is going to have to give
16 and be receptive to in connection with the mother's
17 desires and elections associated with that home
18 delivery; isn't that correct?

19 A Certain --

20 Q Well, the doctor's got to be responsive
21 and take into account in his medical judgment about
22 the desires of the family as it relates to a home
23 delivery?

24 A Absolutely.

25 Q And I suppose it goes without saying that

1 after a child is born in a hospital setting, whoever
2 attends that delivery, whether it's a doctor or
3 midwife or someone else, is going to be relying more
4 upon those members of the household that live there
5 after delivery than if in fact the baby is born in
6 the hospital where the nurses take over the care
7 immediately after delivery?

8 A Unfortunately, yes. I think it places
9 the responsibility more on the doctor, though.

10 Q And so what you -- well, okay. Let's say
11 it does. The doctor, however, is going to have to
12 take that into account in terms of his judgment with
13 reference to the kind of care he prescribes under
14 the circumstances, correct?

15 A Uh-huh.

16 Q Now, if you take a baby like the one
17 we're talking about and you have a situation where
18 the family wants the baby at home and you have a
19 situation where cost is of some concern with respect
20 to the family and you have a situation where the
21 Apgar is eight at one minute and at five minutes,
22 you have a situation where those that are at home
23 include a grandmother who has had seven children,
24 four of whom have been born at home, you have, in
25 addition to that, a situation where the doctor has--

Tab D

IN THE FOURTH CIRCUIT COURT
IN AND FOR DAVIS COUNTY, LAYTON DEPARTMENT

-----)	
STATE OF UTAH,	)	CIVIL NO. 871000415
)	
Plaintiff,	)	REPORTER'S TRANSCRIPT,
	)	<u>VOLUME IV</u>
vs.)	
	)	FEBRUARY 25, 1988
DAVID WARDEN,)	
	)	REPORTED BY:
Defendant.	)	RENEE L. STACY, CSR, RPR
-----)	

VOLUME IV

COPY

BE IT REMEMBERED that commencing on February 22, 1988, through February 26, 1988, the above-entitled matter came on for HEARING in the Fourth Circuit Court in and for Davis County, Layton Department, before the HONORABLE K. ROGER BEAN.

Representing the Plaintiff: MELVIN C. WILSON
BRIAN NAMBA

Representing the Defendant: DARWIN C. HANSEN

* * * *

STACY & ASSOCIATES
717 Boston Building
Salt Lake City, UT 84111

I N D E X

Witness

David R. Warden

Direct Examination by Mr. Hansen	39
Cross Examination by Mr. Wilson.	118
Redirect Examination by Mr. Hansen	212
Recross Examination by Mr. Wilson.	228
Re-Redirect Examination by Mr. Hansen.	233

Gregory White

Direct Examination by Mr. Hansen	234
Cross Examination by Mr. Namba	290

1 A I attended Davidson College in Davidson,
2 North Carolina.

3 Q Did you receive a Bachelor of Science
4 degree?

5 A Yes, I did.

6 Q In what field?

7 A In biology and chemistry.

8 Q Did you attend medical school thereafter?

9 A Yes, I did.

10 Q Where?

11 A I attended the University of Pennsylvania
12 Medical School in Philadelphia, Pennsylvania.

13 Q What year did you graduate?

14 A I graduated in 1964.

15 Q Did you do an internship thereafter?

16 A Yes, I did.

17 Q And where did you do the internship, Dr.
18 Warden?

19 A Madigan Hospital in Fort Lewis,
20 Washington.

21 Q That's up in the northwest in the state
22 of Washington?

23 A Yes, it is. It's an army hospital.

24 Q How long was your internship, sir?

25 A One year.

1 service, would you tell us basically where you
2 served?

3 A I was in many different training
4 situations for military training such as airborne
5 and ranger training and others, but was primarily
6 assigned to Fort Campbell, Kentucky as a flight
7 surgeon and then later as the division surgeon in
8 the 101st Airborne Division.

9 Q Were you ever involved in a combat zone?

10 A Yes, I was. I had a tour in Vietnam
11 during 1967 and '68.

12 Q When did you finally complete your
13 military service?

14 A I completed the active duty part of my
15 military service in September of 1968.

16 Q Then did you begin practicing medicine
17 privately as a civilian?

18 A Yes, I did. That's when I came to
19 Kaysville, to the Kaysville Medical Center.

20 Q And have you been there ever since?

21 A Yes, I have. I came in October of '68.

22 Q Now, you indicate that you practice
23 family medicine. In terms of family medicine or
24 family practice, is that an acknowledged specialty
25 in the field of medicine?

1 A Yes, it is.

2 Q Are you Board Certified?

3 A Yes, I am.

4 Q When were you Board Certified?

5 A I became Board Certified in 1970.

6 Q Does that, from time to time, require a
7 re-certification?

8 A Yes, it does.

9 Q Are you currently Board Certified?

10 A Yes, I am.

11 Q And have you been from 1970 to the
12 present time?

13 A Yes.

14 Q And have you practiced in the area of
15 family medicine from 1968 until the present time in
16 Kaysville?

17 A Yes, I have.

18 Q Doctor, while you have been in the
19 Kaysville area, have you been involved in military
20 affairs as a civilian?

21 A Yes, I have.

22 Q In what regard, sir?

23 A I've been a member of the Utah National
24 Guard as a physician for the guard and I began as
25 the group surgeon of the 19th Special Forces Group

1 and did the combined of being the flight surgeon for
2 the aviation portion of the state.

3 Q Doctor, in connection with aviation
4 medicine, do you have occasion to perform any
5 medical treatment for pilots or aviators today in a
6 civil capacity?

7 A I've been qualified as a Class I aviation
8 medical examiner by the FAA and do perform Class I
9 flight physicals on commercial airline pilots.

10 Q Are you actively doing that now?

11 A Yes, I do.

12 Q In connection with your military
13 involvement with the Utah National Guard, -- well,
14 let me say this. In the military I understand there
15 are branches like the signal corps, the infantry,
16 the armor and the medical corps. Are there branches
17 of service like that in the Utah National Guard?

18 A That's correct. I'm in the medical
19 corps.

20 Q What rank do you hold?

21 A I'm a colonel.

22 Q What responsibilities do you have today
23 as a colonel in the Utah National Guard Medical
24 Corps?

25 A I'm a staff officer to the adjutant

1 Q With respect to a home delivery versus a
2 hospital delivery, are there certain circumstances
3 that a physician would look for that would make a
4 home delivery appropriate as opposed to a hospital
5 delivery?

6 A Yes, there are.

7 Q What would those circumstances be?

8 A The hospital sometimes is a psychological
9 threat to a patient and sometimes the expense of the
10 experience may indicate a need for another
11 consideration.

12 If the patient has no evident risks of
13 problems, they may consider a home birth. If
14 there's a need for family support which may be
15 indicated that cannot be obtained in the hospital
16 setting, patients may consider a home birth.
17 Sometimes there is a total fear or a psychological
18 fear of the hospital. Those are some of them.
19 There are others.

20 Q In connection with those particular
21 elements of a home birth, do you consider at all the
22 availability of the emergency facilities?

23 A Yes. In considering a home birth, I have
24 always wanted to try to have a hospital in the
25 vicinity as close as possible to a home birth,

1 anticipating the possible risk.

2 Q And the purpose of that would be what,
3 doctor?

4 A If in a home birth there were a problem,
5 the need for hospital support is minimized if the
6 distance between the place of the delivery is near a
7 hospital facility that can provide some of that
8 support.

9 Q You indicated that in a home delivery
10 there needs to be special attention to family
11 support. Tell us about that, sir.

12 A When a baby is born in the home and I, as
13 a physician, am caring for the process of birth, in
14 the immediate postpartum period I need to be able to
15 depend on someone to be able to take care of the
16 baby and to watch for problems when I can't be there
17 any longer.

18 Therefore, it's particularly important to
19 try to check the support people that are in a family
20 setting to see if they are able to support the event
21 and take my place when I'm not there and observe and
22 be able to recognize problems and let me know if
23 they occur.

24 Q Now, Doctor, you used a medical term when
25 you said "postpartum." I understand that means

1 Q Had you seen her before?
2 A I had not.
3 Q Had you spoken to her?
4 A I had not.
5 Q Did she come to your office that day with
6 Mrs. Young, Ivy Young?
7 A Yes, she did.
8 Q We've referred to her as Grandma Young, I
9 think, during some of this trial. Both of them came
10 to your office?
11 A Yes.
12 Q Did you meet with them?
13 A Yes.
14 Q Were they both present when you met with
15 them?
16 A Yes.
17 Q What was their purpose in coming?
18 A Mrs. Young attended her daughter to
19 discuss with me whether or not I might help them
20 with a home birth.
21 Q Did you make an assessment during that
22 first visit as to whether a home birth would be
23 appropriate in their case?
24 A Yes, I did. In introducing myself to
25 Mrs. Young, Grandma Young, I was excited by her

1 English accent and we talked initially, in my

2 process of getting to know her and evaluating her,
3 about her experiences in England.

4 Q Was that in connection with your

5 assessment as to the family support in the home if

6 Joanne had the baby at home?

7 A Yes.

8 Q Tell us what you learned with respect to

9 your assessment of family support.

10 A Mrs. Young had had seven children and

11 expressed that she had had four of them at home and

12 had had quite great successful experiences in doing

13 that. Also, Mrs. Young gave me the evidence that

14 she had participated in other home births in the

15 capacity of being a Relief Society president and

16 supporting other mothers in home birthing.

17 She also indicated that other members of

18 her family had had home births in England and that

19 she had had her last baby around three or four years

20 before that. And, in talking with Joanne, Joanne

21 was excited because she had participated in being a

22 part of the bringing up of her little sister.

23 Q Doctor, did you have any discussion with

24 Joanne about her knowledge and information or her

25 knowledge and ability with reference to a new child

1 in connection with family support?

2 A Yes, I did. Joanne was very embarrassed
3 and sitting tearfully and she explained her interest
4 in a home birth because of her embarrassment at
5 being in a hospital setting. I recognized as I
6 talked to her and explained to Joanne that she was
7 not in an unusual position of being pregnant and out
8 of wedlock and referred her to some Biblical
9 references that helped her to understand that there
10 were lots of illegitimacies in Jesus' background.

11 Q Doctor, was there any discussion that you
12 had with Joanne about her knowledge of children and
13 the birthing process?

14 A Yes, I did. Joanne indicated that part
15 of the reason she had considered a hospital birth
16 was that she had taken the child development class
17 at Davis High and that she and her mother had been
18 talking about things like this and that she felt she
19 was prepared to have a baby at home.

20 Q In your association as the doctor for the
21 teams at Davis High School and your eight children,
22 did you have any general knowledge of the child
23 development course at Davis High that you understood
24 she had taken?

25 A Yes, I had. I was -- I had been very

1 impressed with the child development course at
2 Davis, having had a daughter and four sons that had
3 taken the course at that particular time.

4 Q Did you assess whether a home birth would
5 be appropriate in the Young case as it relates to
6 the element of expense?

7 A Yes. During the conversation, these
8 various reasons for having a home birth were being
9 expressed by both Mrs. Young and Joanne in getting
10 their past history, and the fact that they had been
11 to Dr. Bitner. I was able to find out that they had
12 already accrued expenses that they were having a
13 hard time managing, and at the same time that they
14 had been scheduled for an ultrasound which they just
15 simply could not afford.

16 I also was able to find out from Joanne
17 that one of her great concerns in the situation was
18 that she didn't want to be a burden to her parents,
19 she didn't want to be a burden to the boyfriend
20 whose parents had offered some support, that she
21 wanted to try to handle the -- keep the expenses at
22 a minimum, that she was an alien, that she did not
23 have citizenship, that she was afraid to discuss her
24 matters with her bishop in light of her moral
25 problems and that she needed to be trying to reduce

1 the costs of her medical care to as low as possible.

2 Q Doctor, did you evaluate the
3 psychological element of a home delivery in
4 connection with the Youngs?

5 A Yes, I did. I think that Joanne
6 indicated to me with tears that she was afraid to be
7 going to the hospital, she was embarrassed and that
8 she felt ashamed that she was pregnant and had not
9 been married and she didn't want to have to share
10 this embarrassment with so many different people in
11 the hospital setting.

12 Q In terms of the availability of emergency
13 care, although I think it's clear by reason of prior
14 testimony, but did you become aware of where the
15 Youngs lived?

16 A Yes, I did. They lived right in the city
17 of Kaysville.

18 Q Where you live?

19 A Yes.

20 Q What's the distance between your home and
21 their home?

22 A My home is about five blocks from their
23 home towards the east.

24 Q And are there hospital facilities
25 available to Kaysville?

1 A Yes. There's a hospital within 12
2 minutes, Layton Hospital, Davis North, and 14
3 minutes to Lakeview Hospital in Bountiful.

4 Q And I understand, in addition, there are
5 paramedics and emergency care available?

6 A Yes, there is.

7 Q Through the Davis County Sheriff's
8 Office?

9 A Yes.

10 Q Doctor, did you, in addition to your
11 assessment, have any -- in addition to your
12 assessment, did you make a judgment as to whether her
13 risk of pregnancy would suggest a home delivery or
14 at least would be consistent with a home delivery?

15 A After discussing at some length in
16 evaluating her and having them get consumed and feel
17 relaxed with me, I asked Joanne, "Come on. I think
18 that I'll help you with a home birth, and come and
19 get on the examining table and stick out your
20 stomach," and I went ahead and made a prenatal
21 examination, realizing that Dr. Bitner had already
22 obtained evidences of her health, and asked them,
23 after the examination, to request those records so
24 that I could not have to be repetitive in the
25 laboratory studies.

1 Q Had they told you what they had done with
2 respect to Dr. Bitner?

3 A Yes. They explained to me that they had
4 had a full prenatal workup, that they'd had their
5 blood drawn and that he had determined that he felt
6 that she was due on the 8th of December and that the
7 laboratory tests had already been done but she was
8 not aware of her blood type or her other studies.

9 Q Did she indicate to you that Dr. Bitner
10 had given her any cause for concern or alarm?

11 A She did admit that she -- Dr. Bitner had
12 expressed to her the need for an ultrasound because
13 he was a little bit concerned about her due date.

14 Q Did that concern you, Doctor?

15 A Yes, it did. I tried to establish my own
16 due date based on the guess at her last menstrual
17 period and felt that I should add ten days to what
18 was already given so that we could be a little more
19 safe.

20 Q Did you physically examine Joanne?

21 A Yes, I did.

22 Q Tell us about that, sir.

23 A I checked her blood pressure for its
24 normalcy. I listened to her heart. I evaluated the
25 width and anterior-posterior diameter of her pelvis

1 from an external exam. I palpated her abdomen for
2 the position of the fetus. I listened for fetal
3 heart tone and assessed the size of the height of
4 her uterus.

5 Q After you had completed the examination,
6 did you make any conclusions as to her due date?

7 A I felt that she was consistent with the
8 expected date of confinement of early December and
9 also felt that she was of low risk for a home birth.

10 Q Did you consider the ultrasound that Dr.
11 Bitner had recommended?

12 A No, I did not.

13 Q Why not, Doctor?

14 A The family had already expressed a lack
15 of interest in the ultrasound because of expense.
16 Also, the ultrasound at this point in pregnancy is
17 less convincing of the size or the date of
18 expectancy. The ultrasound is much more accurate at
19 the 20th week of gestation.

20 She was getting closer to term. The only
21 purpose an ultrasound would have given at that point
22 was to have an idea of the position of the placenta.
23 I don't ordinarily practice with the use of the
24 ultrasound. I think that it is an extra expense,
25 and since it was an expense that the family had

1 already expressed as unnecessary, I agreed with
2 that.

3 Q You don't feel there was any medical need
4 for the ultrasound at the time?

5 A That's correct.

6 Q Doctor, you've already made reference to
7 this, but after you did the physical examination,
8 did you draw any conclusions about the risk of her
9 pregnancy?

10 A I felt at this point that Joanne
11 indicated no unusual risk and therefore was a low
12 risk pregnancy.

13 Q Did you agree then to attend her with
14 respect to her home delivery?

15 A Yes, I did. I expressed that to the
16 Youngs and also explained to them that they should
17 be returning in another month, especially if they
18 wanted to continue to have me help them with their
19 home birth.

20 Q What was your feeling about the rapport
21 between you as the physician and the Youngs as your
22 patient on that occasion after the visit had
23 occurred?

24 A I felt that I had been very warmly
25 accepted as their doctor and also felt a similar

1 feeling towards them with a desire to be of help as
2 much as I could.

3 Q How long did that first visit last; do
4 you recall?

5 A I believe it was probably around a 45
6 minute visit.

7 Q And then a re-appointment was made?

8 A Correct.

9 Q There has been testimony in this case, I
10 believe, that the next time that you saw the Youngs
11 was on the 6th of October, 1986. Is that consistent
12 with your recollection?

13 A Yes, it is.

14 Q Who came to the office that day?

15 A Joanne came in attendance again with Mrs.
16 Young.

17 Q And were you there to receive and look
18 after them?

19 A Yes, I was.

20 Q Did you do any physical examination of
21 Joanne on that occasion?

22 A Yes, I did. I carried out a routine
23 prenatal visit again.

24 Q Would you tell us what that involves,
25 sir?

1 A A routine prenatal visit includes the
2 obtaining of a urine for check of infection or the
3 evidence of sugar. It includes a blood pressure
4 check, it includes examination of the abdomen.

5 I examined the abdomen for the position
6 of the baby, for increasing uterine size. I again
7 evaluate the patient for any other obvious medical
8 problem and looking for any evidences of infection
9 or other problems.

10 Q Did you find any evidence of infection?

11 A During this visit, although Joanne was
12 asymptomatic, had no symptoms of bladder infection,
13 her urine showed an infection and her urinalysis
14 showed an infection and she was started on a Sulfa
15 medication for the treatment of her bladder
16 infection.

17 Q Is that an appropriate medical treatment
18 in light of the fact that she was then conceived
19 with a baby?

20 A Yes, especially in the latter part of the
21 pregnancy.

22 Q Dr. Warden, did you have any reason,
23 after that examination and that office visit, to
24 change your assessment as to the propriety of this
25 baby being born at home?

1 A No, I did not. A urinary infection is
2 something to be watched for but doesn't change the
3 status of the patient from the standpoint of risk.

4 Q Doctor, either on the first visit or the
5 second visit, was there any discussion between you
6 and Joanne or between you and Mrs. Young, Grandma
7 Young, with respect to preparing Joanne for the
8 eventuality of the delivery?

9 A Yes. I had in the first visit
10 conversationally established Mrs. Young as the
11 primary support person for Joanne in her delivery.
12 At the same time I also asked and I believe got an
13 involvement of the rest of the family as support
14 people, exclaiming to them the value of having the
15 whole family participating in this to give Joanne
16 the support she needed.

17 Q Is there an advantage for the whole
18 family in a delivery to be involved to some degree?

19 A Probably one of the great advantages of
20 home birth is the bonding experience that takes
21 place as most people understand it between the baby
22 and its mother, but just as valuable are the bonding
23 experiences that can occur between all family
24 members in a home birth with all participating.

25 Q Do you recall any discussion on the

1 second visit with Grandma Young in terms of the
2 process of her preparing Joanne?

3 A Yes. With routine conversation I
4 discussed with grandma how Joanne was doing in
5 getting ready for the baby and if they were having
6 their mother-daughter talks and Mrs. Young assured
7 me that they were having their family talks and
8 getting ready for the baby.

9 Q Did you have any concern on the second
10 visit at all about the forthcoming delivery of the
11 baby?

12 A No, I did not.

13 Q Doctor, I take it that at that time a
14 third visit was scheduled.

15 A That's correct.

16 Q It would have been scheduled by your
17 staff personnel, I think, correct?

18 A Yes.

19 Q And that would have been scheduled for
20 sometime in November?

21 A That's correct.

22 Q When was the next time that you came in
23 contact with a member of the Young family?

24 A On the 7th of November I was attending a
25 Davis High School football game at the Rice Stadium

1 office. How does your office staff contact you?

2 A My office also has a number that can be
3 dialed that will automatically page me. If there
4 are people in my office, I return my call to the
5 office. If no one is in the office, I return the
6 call to the answering service.

7 Q All right, sir. Now, on the 7th of
8 November while you're at the university football
9 stadium with this game, you were contacted that
10 morning on your pager, correct?

11 A Correct.

12 Q About what time did this contact come; do
13 you recall?

14 A This came after the game had already
15 gotten into progress, which made it after 9 o'clock
16 in the morning.

17 Q So it was shortly after --

18 A It was shortly after. It was between
19 9:00 and 9:30.

20 Q So did the page come from your office as
21 opposed to the answering service?

22 A Yes, it did.

23 Q What was the weather like that morning?

24 A We were in the midst of a very heavy
25 snowstorm. People on the way to the ball game had

1 slid off the highway. They had to use a bulldozer
2 to scrape the football field at halftime and so it
3 was a very snowy day. I got through the storm
4 before it started because I went early to the game
5 and had gotten there before 7:30 that morning.

6 Q All right, sir. After you received the
7 page, what did you do?

8 A I returned my call to my office and my
9 receptionist was able to --

10 MR. WILSON: Your Honor, I think I'm
11 going to object as to anything the receptionist
12 would have to say.

13 THE WITNESS: My receptionist --

14 THE COURT: Hold on just a second,
15 Doctor..

16 MR. HANSEN: Well, I think, your Honor,
17 it doesn't go to the -- I think it goes to putting
18 in context the nature of the conversation and the
19 nature of where the call came from. To that extent
20 I think he could tell us. I mean, he can at least
21 indicate that the receptionist told him who had
22 called and then he contacts the person who calls.

23 MR. WILSON: To that extent, I have no
24 objection.

25 THE COURT: All right. You may proceed

1 then.

2 THE WITNESS: I called my receptionist
3 and she connected me to the home of the Youngs by
4 patching it through the regular telephone system.

5 Q (By Mr. Hansen) Did you then talk to
6 anyone at the Young residence?

7 A I talked to Grandma Young.

8 Q Do you remember the conversation?

9 A Yes, I do.

10 Q Would you tell us what was said to the
11 best of your recollection, sir?

12 A I said to Mrs. Young, "This is Dr.
13 Warden." She responded that it was Mrs. Young and
14 that she was calling me because Joanne had waked up
15 this morning with some bleeding. I asked her the
16 extent of the bleeding. She was able to explain to
17 me that it was spotting on the sheets and on her
18 nightgown.

19 I further inquired as to the extent of
20 bleeding and she expressed to me that it was a very
21 minimal amount of bleeding. At least I received
22 that as my input.

23 I further inquired as to the fact that,
24 "I thought, Grandma, that Joanne was not due till
25 next month."

1 Q What was her response?

2 A Her response was, "Well, that's what we
3 had thought and that's what Dr. Bitner had said,"
4 and I said, "Well, let's try to figure out if this
5 is" -- if she could be in early labor, if this is
6 just some bloodiness of the cervix or a little bit
7 of bloody show or could this be labor.

8 And I explained to grandma that -- I told
9 grandma that she should have Joanne go to bed and
10 observe the bleeding and watch for contractions and
11 time the contractions and call me -- I explained to
12 grandma that I was at the football game, that I was
13 down in Salt Lake.

14 I also explained to -- I told grandma
15 that I would be in my office at 1 o'clock that
16 afternoon. I explained that if there were any heavy
17 bleeding, if there could be any heavy bleeding or if
18 the contractions became stronger that she should
19 immediately return my call and that I would come
20 right away, or arrange something else for her to do.

21 Q And why was it that you wanted her to
22 call again if the bleeding increased in terms of
23 mild or the contractions became very severe?

24 A This could have been evidence of a severe
25 third trimester bleed and I was concerned that

1 that's what it could be.

2 Q In which case your conduct would have
3 been what, sir?

4 A I would, with me being as remote as I
5 was, I would have called and arranged for her
6 admission to the hospital.

7 Q All right. Did she call you again that
8 morning while you were at the university stadium?

9 A No, she did not.

10 Q Did you go back to your office that day?

11 A Yes, I did.

12 Q Did you receive a call later that
13 afternoon from Mrs. Young?

14 A Yes, I did. Mrs. Young returned the call
15 at 1 o'clock, as I had asked.

16 Q And what happened -- well, strike that.
17 Did you speak with her directly?

18 A Yes, I did.

19 Q Do you remember that conversation, sir?

20 A Yes. Very well.

21 Q Tell us about that, please.

22 A Mrs. Young reported to me that Joanne's
23 bleeding had stopped. She also reported to me that
24 John Shaw, the boyfriend, had come to the office --
25 had come to her home. Joanne and John Shaw

1 discussed -- had discussed the question I had raised
2 as to the possibility that maybe conception had
3 occurred at an earlier date than what they had
4 thought. John, in answer to that question, had --

5 MR. WILSON: Your Honor, I think I'm
6 going to object to any statement as to what he's
7 stating that John may have said. If he wants to
8 tell the court what Ivy said to him --

9 THE WITNESS: Ivy told me --

10 MR. HANSEN: Just a second, your Honor.
11 That's legitimate, your Honor.

12 THE COURT: Sustained.

13 Q (By Mr. Hansen) Just tell us what Ivy
14 told you, will you?

15 A All right. Ivy told me that the
16 conversation between John and Joanne as reported to
17 her was that John felt that intercourse had taken
18 place in February.

19 I further inquired as to the frequency of
20 contractions. Ivy said that there were -- the
21 contractions had nearly stopped, that they were
22 intermittent, they were very weak, that there was no
23 more bleeding, that conception had taken place in
24 February, and I told Ivy that I thought that this
25 was bloody show. I felt that this was spotting from

1 the cervix. I didn't know whether this was early
2 labor not.

3 I told her that there seemed to be an
4 intermittency of contractions and that there -- I
5 also said that -- I had told Ivy on the first
6 conversation that I thought I might want to examine
7 Joanne at the office when I got there at 1 o'clock,
8 but now that I was at the office and with this
9 report, I felt, in light of the fact that it was
10 extremely snowy that they did not need to come out
11 for an examination at that time.

12 Q Was there any discussion then about her
13 to call or contact your office later in the day?

14 A That's correct. I told Ivy at that time
15 that if more bleeding occurred or if there were
16 increasing numbers of contractions or if it seemed
17 that labor was ensuing that she needed to call me at
18 the office before leaving there around 5 o'clock,
19 that I would be in the office till 5:00.

20 Q Did you receive a call later in the day?

21 A Yes, I did.

22 Q Where were you when you received the
23 call?

24 A I was in my automobile driving from the
25 office towards home.

1 Q Did you talk to Mrs. Young?

2 A Yes, I did.

3 Q Do you remember that conversation?

4 A Yes, I did.

5 I was paged, as I had described, on my
6 way from the office to home, and I took my portable
7 telephone and answered that page and it was Mrs.
8 Young. The page operator gave me the number and the
9 identity of Mrs. Young. The page operator expressed
10 to me that this call had come from Mrs. Young
11 reporting that Joanne.--

12 MR. WILSON: Your Honor, again I'm going
13 to object to anything that the operator may have
14 told him.

15 THE COURT: Mr. Hansen?

16 MR. HANSEN: I'll rephrase it.

17 THE COURT: Sustained.

18 Q (By Mr. Hansen) Doctor, after you
19 received the call from the pager, you then called
20 Mrs. Young?

21 A Correct.

22 Q Tell us about the conversation with Mrs.
23 Young, please.

24 A The conversation with Mrs. Young was her
25 afternoon report. She explained to me that Joanne

1 was still having an occasional contraction. As best
2 she could tell, they were beginning to be regular at
3 15 minute intervals, but that the contractions were
4 varying from very strong to slight and that she was
5 not sure that they were regular but that they were
6 coming about every 15 minutes.

7 Having added up the day and the events of
8 the day, at this particular point I was thinking
9 that Joanne was possibly in early labor, that it
10 wasn't any longer a concern of mine that it was
11 probably premature labor because I had gotten the
12 report that the intercourse took place in February,
13 so I said that, I think, that I'm heading on home.
14 I'm on my way home at the time, so I went home and,
15 in the meantime, while I was still talking to Mrs.
16 Young, explained to her that that's what I was
17 doing, that I was on my way to home and that I would
18 be at my home and that I would like for her to call
19 me if these contractions continued and to definitely
20 call me if the contractions got between three and
21 five minutes.

22 Q Do you remember about what time that
23 phone call came, Dr. Warden?

24 A This phone call was right around 6
25 o'clock.

1 equipment with you?

2 A I always carry my equipment in the trunk
3 of my car and had that with me as I went to the
4 Young home.

5 Q That equipment is in medical bags, I
6 suppose.

7 A Yes.

8 Q How many of those bags are required in a
9 home delivery situation?

10 A I carry three bags, one that contains
11 special equipment for emergency needs, one for the
12 routine delivery and the other are the sterile
13 supplies for draping and caring for the patient in
14 delivery.

15 Q What time did you arrive at the Young
16 home after the call at 10:15?

17 A I arrived at the Young home at 10:30.

18 Q What happened upon your arrival?

19 A Grandpa Young met me at the door and took
20 my coat and greeted me and I went in and I greeted
21 grandma. And Joanne and John Shaw were there and I
22 explained to the Young family that I better examine
23 Joanne.

24 Q Did you do that?

25 A Yes. Joanne went to the bedroom where

1 she anticipated delivery and lay on the bed and I
2 asked grandma to get a towel that I put under her
3 bottom and examined her.

4 Q What were your findings?

5 A I was able to palpate a completely
6 dilated cervix with bulging membranes and the fact
7 that the baby was delivering in a breech position.

8 Q Doctor, when you say "palpate the
9 cervix," can you tell us what you mean when you use
10 that term?

11 A The procedure for finding out what
12 progress was being made in this situation is to put
13 the fingers in the vaginal opening and feel in all
14 directions for a little ridge of tissue that is the
15 cervix. It's the opening to the uterus. In feeling
16 for that little ridge of tissue, I couldn't feel any
17 ridge. It had completely dilated and a large bubble
18 of water was pressuring down against the perineal
19 opening, and feeling through the bulge of water, I
20 could tell that the little baby was delivering with
21 a buttocks. Not with feet, but a full buttocks was
22 into the canal for delivery.

23 Q What next happened, Dr. Warden?

24 A I explained to the family quickly while I
25 took my examining glove off and began to get my

1 delivery equipment ready that this baby was going to
2 be born, and it was.

3 Q In connection with the events that
4 preceded, right up to the birth of this baby, in the
5 examination that you've described, was there any
6 evidence that there had been or was then bleeding of
7 any kind?

8 A In examining the patient, in the process
9 of checking her with my finger, I also was looking
10 for evidence of any preceding bleeding. There was
11 no bleeding evident on the perineum. There was no
12 blood in the vaginal opening or the vaginal vault.
13 There was not a pad on Joanne. There was no blood
14 staining the towel or the sheet underneath. When
15 the amniotic -- are we to that point?

16 Q Yes. What next then happened after this
17 initial examination and you prepared her for
18 delivery?

19 A Having examined her, gone and put on my
20 examining gloves, opening the disposable sterile
21 pack that I use for home birth, I had draped under
22 her buttocks to create the sterile field for the
23 delivery and said "push" and she pushed and the
24 water came.

25 The bag of water ruptured spontaneously.

1 The fluid that exuded is interesting. It's this
2 time to be looked at. The amniotic fluid that came
3 out was perfectly clear. There was no tinging with
4 blood, there was no pinkness to it. Also, the
5 amniotic fluid was significant in that it did not
6 show any meconium staining.

7 Q What do you mean by meconium?

8 A Meconium is the bowel movement of the
9 baby which is often exuded into the amniotic fluid
10 by a baby who would be under any sort of stress in
11 its process of delivery.

12 The meconium did not stain this amniotic
13 fluid and was evidence that the baby had undergone
14 no stress. It's common in breech births that there
15 will be some meconium staining; however, in this
16 particular baby there was no meconium staining and
17 the baby was delivered then without any effort or
18 without any evidence of being under any excessive
19 pressure during the time of birth.

20 Q Can you briefly describe how -- what your
21 function was in assisting in the birth of this child
22 with a breech presentation?

23 A Yes. In a home birth setting it's the
24 kind of a thing to try to involve the spectators in
25 order to have them participate in a full bonding

1 experience so that I took the time at this point to
2 explain to the other family people that this was a
3 breech.

4 Q Were they in the room at the time?

5 A Yes. Grandpa was in the background, in
6 the hall or towards the living room but was excited
7 about the event, but grandmother and John Shaw were
8 present. Grandmother was to the left of the
9 patient. John was on the bed squatted next to
10 Joanne.

11 Q Tell us then what you explained by way of
12 the breech delivery.

13 A I was primarily explaining to John,
14 because he was looking the hardest, and I explained
15 to John that in delivering the breech I needed to
16 rotate the baby so that its back would be towards
17 the front of the mother so that, in handling the
18 buttocks, I rotated the breech to the anterior or
19 towards the front, and at that point you pull down
20 on the baby and you deliver the two legs and you
21 follow up the back of the baby and reach over to
22 pull the right arm and then the left arm and you
23 flex the baby to the posterior and you reach
24 anterior, and I put my finger in the little baby's
25 mouth and flexed its chin on its chest and delivered

1 its head without causing any kind of extension of
2 the baby's neck.

3 This is the procedure for the delivery of
4 a breech. And as I did that, I explained to John
5 that that's what I was doing.

6 Q Was the delivery successful?

7 A In a breech delivery it's very important
8 to be judging the time that has elapsed from the
9 presentation of the breech until the delivery. In
10 this particular case, the baby was delivered in less
11 than a minute.

12 Q The shorter the time, the better, I take
13 it.

14 A Correct.

15 Q Doctor, after the baby -- immediately
16 upon the baby being born, where was it and what did
17 you do?

18 A Immediately upon delivery of the baby I
19 put it on the drape, which was the created sterile
20 field between the legs of the mother where I was
21 working and turned it to its side and observed it to
22 do its first breathing.

23 You place it on the side so that gravity
24 may aid the expulsion of the fluid that's within the
25 nasal passages and in the breathing passages and

1 observed that for evidence of contamination or
2 thickness of the mucus or any evidence of infection.
3 This mucus was clear and it was expired by the baby
4 in a normal fashion and the baby spontaneously
5 breathed without having to be stimulated to do so.

6 Q Did you do anything else by way of
7 examining the baby at that time or making an initial
8 examination?

9 A From the time that the baby is delivered
10 until the time of the clamping and the cutting of
11 the cord, I maintain a hold of the cord right at the
12 area of the baby's umbilicus of its belly button and
13 palpate it to judge the cardiac rate and rhythm and
14 I do that for two purposes. One, to evaluate the
15 heart and its cardiovascular function and the other
16 thing is to determine when is the best time to clamp
17 the cord.

18 The cord is -- it's much better to wait
19 to clamp the cord so that the blood from the mother
20 and the baby equilibrates, the pressures between the
21 two equilibrate. If the cord is clamped too soon it
22 increases the chances of postpartum
23 hyperbilirubinemia or jaundice in the baby, and if
24 it is clamped too late, it sometimes may account for
25 some neonatal anemia or low blood.

1 Q When you say neonatal, you're talking
2 about the new child?

3 A Correct.

4 Q Okay, sir. What were your findings
5 relative to the heart rate as you held onto the cord
6 and palpated it?

7 A The baby had a strong heart rate of
8 greater than 100 beats per minute.

9 Q Did you make any -- did you make any
10 judgment, Doctor, in terms of visualizing the baby
11 -- well, let me put it this way. You've heard
12 testimony in this trial about an Apgar, have you
13 not?

14 A Correct.

15 Q There has been testimony about what it
16 is, the elements of it, et cetera. Did you do any
17 Apgar examination of the baby soon after its
18 delivery?

19 A Yes. The cardiac portion of the
20 evaluation is only part of the Apgar. The rest of
21 the Apgar evaluation included an evaluation of the
22 respiratory part of the baby, the color of the baby,
23 the irritability of the baby and its muscle tone.

24 I made these evaluations. The baby
25 pinked up with its spontaneous respirations, just as

1 expected, but its extremities continued to be -- its
2 hands and feet continued to be blue, which is one of
3 the things evaluated in an Apgar that would subtract
4 1 from its respiratory evaluation. The second thing
5 about the baby -- that was subtracted in the area of
6 its color evaluation.

7 In its respiratory evaluation, the cry
8 and the breathing effort is evaluated. The baby had
9 a spontaneous cry and the baby was breathing
10 normally at the time it delivered at this one minute
11 evaluation; however, the cry was weak. The baby had
12 a typical premature cry. It cried very weakly on
13 the evaluation of this section. Otherwise, the
14 muscle tone being evaluated showed the Moro reflex,
15 the extremities functioned with muscle strength and
16 power. The weakness of the baby was not considered.
17 The baby did not seem weak from the standpoint of
18 muscle tone.

19 And the final thing, its irritability,
20 when I flicked its little heel with my finger, the
21 baby gave a little whimper of a cry. This gives it
22 a 2 from the standpoint of its neurological
23 irritability, and therefore the baby was considered
24 an 8 Apgar at the one minute evaluation.

25 Q And what is the implication medically of

1 an 8 Apgar within one minute of birth?

2 A The 8 indicated that the baby had good
3 potential for the sustaining of life and that the
4 breech birth had not caused any suppression of this
5 baby's ability to survive.

6 Q What next happened, Doctor, in the
7 process?

8 A By this time, the cord had quit pulsating
9 and I was able to clamp the cord and transect it.
10 That's cut it. And then I needed to get rid of this
11 wet little baby.

12 At the same time that I was doing this, I
13 was explaining to those that were present,
14 specifically to grandma, that I felt that this baby
15 was premature after all because it was small, that I
16 felt that the one minute Apgar had shown me that,
17 although it was small, that it was doing well at
18 that particular period of time.

19 Q Was the baby still on the sterile pad
20 during the time of the cutting of the cord?

21 A No. I took the new wet little baby whose
22 cord had been transected and I put it up on the
23 mother's belly and introduced it to its mother and
24 father. The mother looked at the little baby and
25 with the usual mother tones exclaimed and was proud

1 occurred, Dr. Warden?

2 A Grandma -- as I say, grandma was not far
3 behind grandpa, and at the same time Sharon Johnson
4 arrived to the home because she had been told of the
5 imminent problem of delivery and she had missed the
6 birth, but now she had arrived and grandma had
7 completed the weighing of the baby and the baby was
8 given to Sharon to give a hug and a squeeze and to
9 give her opportunity to see the baby.

10 Q Was the baby dressed at that time?

11 A The baby was now dressed and the baby was
12 now dry and it was weighed.

13 Q What happened then after the baby was
14 given to Sharon?

15 A Sharon, when she had the baby in her
16 arms, noticed that the baby had some snorting
17 respirations.

18 Q By that you mean breathing?

19 A Breathing, yes. I hadn't heard the word
20 snorting but when she gave me the evidence that the
21 baby was snorting and she asked me what this
22 snorting respirations meant, I asked her to let me
23 have the baby and she gave it to me and I put it on
24 my lap and the baby was snorting.

25 The rubber bulb was there and grandma

1 handed me the rubber bulb and I suctioned the nose
2 and suctioned the cheeks and -- to see if this would
3 change the snorting. The suctioning didn't change
4 the snorting but the positioning of the baby changed
5 the snorting.

6 The snorting, in actuality, is what is
7 called grunting respirations and I explained to
8 Sharon that this snorting like a pig is a phenomenon
9 in obstetrics or in the neonatal care which implies
10 that the baby is premature and may be showing signs
11 of early respiratory distress syndrome. And this
12 explanation was given to Sharon.

13 At the same time I implied to them that
14 under circumstances such as this that it would have
15 been far better that this baby had been born in the
16 hospital -- not born in the hospital, that the baby
17 might have far been better off to be in the hospital
18 at this point. This was overheard by grandma who
19 replied that, "Gee, that would be awfully
20 expensive."

21 Q Dr. Warden, you heard the testimony of
22 Joanne when she testified that she asked you whether
23 it needed to be in the hospital; do you recall that?

24 A Yes. I don't feel that that's the way
25 the conversation took place. I felt that Joanne

1 asked me what the implications of this kind of
2 breathing was and I explained the implications of
3 the breathing and followed it up with the statement
4 that this baby, being premature and demonstrating
5 this respiratory difficulty, would be better off to
6 be in the hospital and did not get that as a
7 question from Joanne but was a statement that I made
8 following her inquiry as to what the snorting was
9 all about.

10 Q And then the comment from Mrs. Young?

11 A Mrs. Young's statement was, "Gee, that
12 would be awfully expensive."

13 Q What next did you do, Dr. Warden?

14 A Okay. After having shown that the
15 grunting respirations were able to be reduced by
16 proper positioning of the child and because of the
17 home birth maneuver that I was aware of and is one
18 of the differences possibly between a home birth and
19 a hospital birth as you look for some of the natural
20 phenomenon to try to increase the respiratory effort
21 of the baby and to improve the breathing, and so I
22 took the baby and I put it up -- I took the baby
23 from my lap, after Joanne -- after Sharon had given
24 me back the baby and we had been through the
25 breathing, I took the baby and tucked it into the

1 left side of the mother where it could be warm,
2 explaining now again that this little baby is small
3 and that we need to keep it warm, and the best place
4 to keep a baby warm is right next to you, Joanne.
5 And so we put the baby right next to Joanne.

6 The other thing we got into is that,
7 Joanne, I'd like for you to try to nurse this baby,
8 and Joanne said that she wasn't planning to nurse,
9 and I said, "Joanne, under the circumstances, with
10 this newborn" -- "with this premature baby and
11 having had some of this respiratory grunting, I
12 believe we can relieve this baby's respiratory
13 problem with your breathing and that we can also
14 improve the baby's warmth if we get it in next to
15 your skin."

16 Q Now, you said improve the baby's
17 breathing with Joanne breathing?

18 A No. With the baby nursing the mother and
19 getting skin to skin contact.

20 Q All right, sir.

21 A So we undid her left breast and took the
22 little -- I held the little baby's head and put it
23 up next to the mother's nipple and observed the baby
24 to exude its tongue and lick the mother's nipple.

25 Q What is the implication of that, Dr.

1 Warden?

2 A Of all of the things that need to happen
3 between a baby and its mother that will improve the
4 chances that the mother might successfully
5 breastfeed, it's the psychological bonding effect of
6 having this little baby get next to the nipple and
7 have the mother stick her -- see the little baby
8 stick its tongue.

9 The other thing about the tongue being
10 exuded to touch the nipple is that you know that the
11 baby has a further neurologic development that can
12 allow it to be stimulated by this. In other words,
13 it has its rooting reflex, and so when the baby took
14 its tongue to touch the nipple, it implied to me
15 that this little baby is going to be a good nurser.

16 Now, right at that period of time the
17 baby did not latch onto the nipple and it did not
18 begin sucking but it demonstrated a good rooting
19 reflex which meant to me that, as the baby calmed
20 down later and wasn't fatigued, it would be able to
21 nurse very well.

22 Q What next happened, Dr. Warden?

23 A After getting this up there, the mother
24 didn't get excited about this, as I had hoped, but
25 continued to have the baby next to her and warming.

1 And I was finished with the mess at the bottom and
2 began to clean up my instruments and my bags and I
3 took grandma into the hallway.

4 In the meantime Sharon had her camera and
5 took the picture that has been demonstrated to the
6 jury and did the picture-taking now while I was
7 talking to grandma in the hallway between the living
8 room and the delivery room.

9 At this point I was able -- I told
10 grandma that this little baby was a premature baby.
11 I told her that the baby had respiratory difficulty
12 that was indicating that this baby was premature. I
13 told her that this required some observation. I
14 explained to her that she needed to be watching this
15 baby through the night, that I was depending on her.

16 I further told grandma that I didn't
17 think Joanne was able to do this and that I would
18 expect grandma to be up during the night watching
19 this baby. I felt that the baby was stable, that
20 the Apgars already mentioned had been 8 initially,
21 had not changed in the five minutes, were still 8,
22 and that if nothing changed, if this baby were
23 continuing to keep the same temperature, if it
24 showed no respiratory difficulty and if it did not
25 change color, then she could be all right to keep

1 this baby home, otherwise I wanted her -- I told her
2 to call me if there was any change in this
3 situation.

4 Q Doctor, after you had that conversation
5 with the mother, what next happened during the
6 course of the events that evening?

7 A Grandma assured me that she would observe
8 the baby and that she would call me if she had any
9 problem and I was relieved with that. And now
10 relaxing somewhat with the mother -- the grandma,
11 now the mother and the father had the baby, were
12 playing and enjoying it and Sharon taking pictures,
13 I further, now, with grandma went into the living
14 room to talk to grandpa.

15 He was happy with the events that had
16 occurred and was excited that this birth had taken
17 place, but grandma and grandpa showed me the family
18 portrait on the front wall and, being proud of their
19 family, started with the oldest son and explained to
20 me that he was married in the Temple, and about each
21 child having been born, the circumstances of each
22 child's birth, whether it had been born at home or
23 in the hospital or if there had been problems or
24 anything, and they went through the whole family on
25 the family portrait in the living room as I visited.

1 They were proud of their family, but they
2 got to Joanne and expressed extreme unhappiness with
3 the way in which this, their last -- this, their
4 daughter, had been the first one in the family to
5 have this kind of an event occur with her.

6 Q What was your reaction to that comment,
7 Doctor?

8 A I was feeling that a positive input
9 needed to be made in support of this family and
10 explained to grandma and grandpa that I thought
11 Joanne had done a tremendous job delivering that
12 baby, having been her first baby and delivering it
13 with that amount of courage, and that she was trying
14 to work out her problems and everything was going to
15 be all right and for them not to be so concerned and
16 they needed to be supportive of Joanne and that now
17 Joanne needed them probably more than she ever did
18 and admonished grandpa and grandma to get in there
19 and support Joanne in this event that had occurred
20 and that she's going to be okay and she'll turn out
21 all right.

22 Q Did you then go back in and check the
23 baby in the bedroom?

24 A Yes, I did. After this scene in the
25 living room, I wanted to go back and see if the baby

1 was okay before I would be leaving and wanted to be
2 sure that there had been no increased symptoms,
3 having the assurance from grandma that she would
4 watch the baby.

5 I went in to check the baby and the baby
6 at this point was still cuddled next to the mother.
7 The baby, I think, had warmed somewhat because in
8 looking at its upper extremities -- I didn't uncover
9 the baby to look at its feet, but its face was pink,
10 its hands were blue. It seemed that any respiratory
11 difficulty had subsided. The baby was respiring
12 well, the baby was still awake and alert and muscle
13 tone was still good. I was impressed that the baby
14 was premature. I was impressed that the baby had
15 already shown some signs of respiratory distress
16 syndrome, but under similar circumstances in the
17 past, I have left babies at home, having instructed
18 the mother on how to nurse, having instructed the
19 mother to keep the baby warm and therefore I felt I
20 could leave, confident that grandma would call me,
21 confident that if there were any progression of
22 symptoms that I would be called.

23 And as I left, I again let grandma know
24 that if anything changed, if the respirations -- if
25 the grunting returned or the grunting increased, if

1 the baby changed color or if she was having trouble
2 maintaining temperature, that she should call me.

3 Q What time did you leave the home, Doctor?

4 A I left the home at 11:25, 11:30.

5 Q Where did you go?

6 A I went straight home to bed.

7 Q Now, these are the events of November the
8 7th, 1986?

9 A Correct.

10 Q On the Saturday, November the 8th, 1986,
11 what time did you arise?

12 A My family gets upset with me for being an
13 early riser. I get up in the morning at 5:00 and I
14 did that particular day and I --

15 Q What did you do that morning?

16 A I take care of the morning natural
17 functions and read National Geographic magazine in
18 front of that area and --

19 Q What activities would you -- Doctor, what
20 activities did you get involved in that morning in
21 connection with your home or outside the home?

22 A Saturday mornings the racquet club
23 doesn't open until 7 o'clock so I took a little more
24 time to get my clothing and my racquetball equipment
25 together before I went to the racquet club and went

1 Q All right. Did you receive any other
2 phone calls? Did your office receive any other
3 phone calls that day up until noontime, any phone
4 calls coming in from any person in behalf of the
5 Youngs?

6 A No, they did not.

7 Q Did you make contact with the Young
8 family?

9 A Yes, I did. As soon as I had finished
10 seeing patients I called the Young home.

11 Q Whom did you speak with?

12 A I spoke with Grandma Young.

13 Q Do you remember that conversation?

14 A Very well.

15 Q Can you tell us about that, Doctor?

16 MR. WILSON: Before you begin on that,
17 counsel, could you give me a little more foundation
18 as to time and where the call --

19 MR. HANSEN: Okay.

20 Q What time did you call Mrs. Young,
21 Doctor?

22 A It was around noontime.

23 Q When you were on the telephone and you
24 spoke with her, did you recognize her voice?

25 A Yes, I did.

1 Q And you recognized and identified her as
2 Mrs. Young?

3 A Yes.

4 Q Can you recall that conversation?

5 A Yes, I can.

6 Q Would you tell us what you recall, sir?

7 A Yes, I can. I called, I said, "Hello.
8 This is Dr. Warden. How's the baby?" And Grandma
9 Young said the baby had just expired.

10 Q What was your reaction?

11 A It was a devastating experience for me
12 and I don't know -- and so I was speechless for a
13 minute but inquired. I said to grandma, "Why? What
14 happened?" And grandma explained that the baby had
15 gotten worse and that she had tried to call me and
16 that she had called the bishop and the bishop had
17 come and brought Dr. Kramer and they had taken the
18 baby to the hospital and tried to help it and that
19 it had died.

20 And I asked grandma, "Why didn't you call
21 me, grandma?" And she didn't explain that. She
22 just said, "Well, didn't" -- I can't remember what
23 exactly she said at that point. I just know that I
24 asked her why she hadn't called.

25 Q Did she indicate to you what she had done

1 to try to contact you?

2 A Oh, that's correct. That was her answer.
3 When I told her, "Why hadn't you called," she said
4 she had tried to call me and that she had called my
5 home and found out I wasn't there.

6 Q After that phone call, what did you do?

7 A I called home to find out why my wife had
8 not called me.

9 Q And did you speak to her about any calls
10 to your home that morning?

11 A Yes, I did.

12 Q Now, Doctor, did you have occasion on
13 that particular day to talk with any other persons
14 about what had happened with respect to the death of
15 this baby?

16 A After calling my wife and finding out
17 that conversation, I immediately called Dr. Kramer.

18 Q Did you get through to Dr. Kramer?

19 A Dr. Kramer refused to answer my call.

20 Q You were unable to get to him?

21 A I was unable to reach Dr. Kramer.

22 Q Did you talk to anyone else?

23 A I called Bishop Lloyd.

24 Q Did you speak to him?

25 A Yes, I did.

1 is write a note to the bailiff and ask the bailiff
2 to ask the mother of the child to wait out in the
3 foyer. Just write a note to the bailiff.

4 THE COURT: Would that seem all right?

5 MR. WILSON: No objection. We have no
6 problem.

7 THE COURT: The court thinks the
8 suggestion is a good one and we'll follow it. You
9 may proceed.

10 DIRECT EXAMINATION

11 BY MR. HANSEN:

12 Q Dr. White, sir, will you tell us your
13 name?

14 A Gregory J. White.

15 Q And your address, sir?

16 A My home address is 735 Thatcher Road,
17 River Forest, Illinois.

18 Q Are you a medical Doctor?

19 A Yes, I am.

20 Q What is the address of your medical
21 office?

22 A 2821 Ross Street, Franklin Park,
23 Illinois.

24 Q In terms of your profession as a medical
25 Doctor, could you describe where it was that you

1 attended medical school?

2 A Yes. I went to Loyola University Medical
3 School in Chicago, now known as (?) School of
4 Medicine of Loyola University.

5 Q Did you thereafter have an internship?

6 A Yes. At St. Ann's Hospital in Chicago.

7 Q And how long was the internship, sir?

8 A The internship was nine months due to the
9 army calling me to active duty.

10 Q With reference to the military, how long
11 did you serve?

12 A I served as a physician for two years in
13 the army.

14 Q And what rank were you when you got out
15 of the army?

16 A Captain.

17 Q With reference to the nature of your
18 medical practice while you were in the army, would
19 you tell us what you did, sir?

20 A Well, my military occupational specialty
21 was general practice and I had various jobs. I ran
22 a psychiatric ward for awhile. I ran a minor septic
23 surgery ward for awhile. I ran a dermatology ward
24 for awhile. These were in station hospitals. I was
25 on a war ship and a hospital ship and troop ships

1 and I had considerable ship duty across the
2 Atlantic, sea duty.

3 Q After you got out of the military,
4 Doctor, did you do any residency experience?

5 A Yes. I spent a year in an obstetric
6 residency.

7 Q Where was that located?

8 A Obstetrics and Gynecology at Loretto
9 Hospital in Chicago.

10 Q How long was the residency?

11 A I spent a year in it and then I decided
12 to go into practice for full residency in obstetrics
13 at that time. It was three years.

14 Q And so you completed a year and then went
15 into what, family practice?

16 A That's correct.

17 Q Have you been engaged in family practice
18 ever since then, sir?

19 A Yes, sir, I have.

20 Q And how many years have you been involved
21 in family practice?

22 A Nearly 40 years. It will be 40 this
23 year.

24 Q Doctor, tell us a little bit about the
25 area of Illinois, Franklin Park where your office is

1 located. Are there medical schools nearby?

2 A Well, this is in the western suburbs of
3 Chicago and there are five medical schools in
4 Chicago.

5 Q And a number of doctors who practice --
6 well, strike that.

7 Are there numerous hospitals in the area?

8 A Yes, I think there's something upwards of
9 40 hospitals in the area.

10 Q And doctors then have access to the
11 medical school and also the hospitals, I take it, in
12 their respective practice?

13 A Yes. Most of us don't go to more than
14 one or two hospitals, but --

15 Q Doctor, in connection with that area in
16 Chicago compared to the area here in Utah, if I were
17 to tell you in Utah that we have a medical school in
18 Salt Lake City and in addition we have several
19 hospitals in the area, although the number may not
20 be the same, but in terms of the general location
21 and the general medical flavor of the area, would
22 the two areas be comparable?

23 A I should think so.

24 Q Doctor, in your family practice, have you
25 practiced obstetrical medicine; that is, handled

1 the--

2 A Yes. I've been delivering babies from
3 the time I opened my office till the present time.

4 Q Now, over the last 40 years of your
5 practice, sir, would you estimate how many
6 deliveries that you have handled?

7 A I would say, if I include my training
8 period, I would say that I've probably delivered
9 about 5,000 babies.

10 Q Would some of those be in a hospital and
11 some perhaps be in a home setting?

12 A Approximately 4,000 would be in the
13 hospital and 1,000 at home.

14 Q Are you currently doing any deliveries at
15 home, Doctor?

16 A Yes, I am.

17 Q Do you do any hospital deliveries,
18 Doctor?

19 A No. For the last three or four years I
20 have not.

21 Q You've been doing home deliveries?

22 A Correct.

23 Q Doctor, are you familiar with what is
24 known as the La Leche League?

25 A Yes, I am.

1 Q What is the purpose of that league, sir?

2 A It's an organization to teach mothers
3 good mothering through breastfeeding.

4 Q Does that relate in any way to home
5 deliveries?

6 A Peripherally, yes. I try to get all my
7 patients who are going to have home births to go to
8 meetings of the league so they will be well
9 instructed in breastfeeding. This is a great added
10 safety factor in a home birth. It limits the amount
11 of mother's bleeding and it gets the baby off to a
12 better start with regard to breathing and to
13 immunity to disease.

14 Q Do you recommend in a home delivery
15 setting that nursing be done?

16 A Very strongly, yes.

17 Q Doctor, do you belong to any professional
18 organizations?

19 A Yes. I'm a member of the American
20 College of Home Obstetrics, the American Academy of
21 Family Practice, the Illinois Academy of Family
22 Practice and the Catholic Physicians Guild of
23 Chicago and I think that's about it.

24 I was a member of the AMA and of the
25 Illinois State Medical Society and the Chicago

1 Medical Society for 24 years but I dropped out in
2 1970 when they endorsed abortion on demand.

3 Q With reference to the initials AMA, I
4 take it that means the American Medical Association.

5 A Correct, yes.

6 Q Doctor, in connection with home births,
7 are there certain aspects of attending a home birth
8 that may be slightly different in terms of emphasis
9 than a hospital birth?

10 A Yes, I would certainly say so.

11 Q Would you indicate what some of those
12 areas are, please?

13 A Well, the home birth is safer with regard
14 to infection than a hospital birth because of the
15 fact that a woman is immune to the germs in her own
16 home. This is why we try to maintain fanatically
17 sterile conditions in a hospital because three women
18 may deliver in the same room on the same day with
19 three shifts of nurses and their doctors and perhaps
20 a couple of shifts of interns and three cleaning
21 ladies and so forth, so the number of people that go
22 in and out of a delivery room in a well run hospital
23 during the day is very considerable, whereas in a
24 woman's own home she is exposed only to the germs of
25 her husband, her older children and the few visitors

1 that may drop in. And the doctor or midwife, as the
2 case may be, the home birth attendant is very
3 careful to wear sterile gloves and to avoid
4 contaminating the mother or baby.

5 Q Are there other aspects of home delivery
6 that may be an advantage?

7 A Yes. The woman usually feels a great
8 deal more relaxed because she's in her own home.
9 She sees only familiar faces. She knows the birth
10 attendant, be it a midwife. She knows her husband,
11 and if her mother is there, fine. She's in familiar
12 surroundings. The pictures on the wall, the drapes
13 and the furniture are hers and she is much more
14 relaxed and has usually a quicker easier labor.

15 Besides that, the big advantage and the
16 main reason that most women request home births is
17 that they and their husbands won't be separated from
18 the baby at all afterwards. In hospitals it's
19 customary to take the baby away for a period of
20 hours for various procedures and in the home this is
21 done in the woman's bedroom right in front of her
22 and the baby is not taken away from her.

23 Q With reference to home deliveries is it
24 fair to say that there must be appropriate family
25 support?

1 A Yes.

2 Q Why is that important, Doctor?

3 A Well, a woman who has just delivered a
4 baby is certainly not encouraged to do any heavy
5 physical work and, besides that, if it's her first
6 baby, she may know very little about the process in
7 spite of having been to classes. If her mother or
8 older sister or someone who is experienced is there,
9 this can give her a lot of -- make her feel much
10 more secure as well as giving her some necessary
11 information.

12 Q Doctor, do you feel like you have
13 expertise in the field of home deliveries?

14 A Well, I've done a few, as I said. I've
15 trained myself well for it. I've gone to meetings
16 of the American College of Home Obstetrics where
17 various aspects of this have been discussed at
18 length by different authorities and I think I'm
19 pretty well conversant in the field, yes.

20 Q Do you, in connection with these
21 organizations that you have mentioned you belong to,
22 do you have colleagues that you share information
23 with, exchange information with and that sort of
24 thing in the area of home deliveries?

25 A Yes.

1 Q And in that regard, Doctor, I would like
2 to give you a hypothetical situation and then ask
3 you to testify about the situation in terms of your
4 medical opinion. May we do that, sir?

5 A Yes.

6 Q And so that we know the direction we're
7 going, Doctor, I'm going to give you a certain
8 amount of the hypothetical and then get opinions
9 from you and then add to the hypothetical with more
10 opinions, et cetera. Each time we go through the
11 hypothetical we'll just increase in length in terms
12 of facts, okay, sir?

13 Dr. White, I want you to assume the
14 following to be true. Number one, that we have a
15 pregnant mother who is 18 years old. This is her
16 first pregnancy and it is an out-of-wedlock type
17 pregnancy.

18 She lives with her parents in a small
19 community near a hospital and also near emergency
20 care, ambulance service and the like. The parents
21 are parents of seven children, including this
22 daughter that's now conceived with the child. Four
23 of those children, four of those seven children were
24 born at home. One of those children at home at
25 the current date of this event is a little girl 3 or

1 4 years old, so the 18 year old mother has a younger
2 sister.

3 In addition, the mother -- and I'm going
4 to refer to her as grandmother with reference to the
5 baby so we can keep straight the grandmother, the
6 mother and the child -- the grandmother, in
7 addition, has at least been exposed to other home
8 deliveries in her capacity in her church in addition
9 to the four home deliveries that she's had herself.

10 Upon the mother of the child learning of
11 her pregnancy, she and her mother, the grandmother
12 of the baby, went to an obstetrician-gynecologist,
13 Board Certified, near the town where she lived and
14 they made two visits to this physician. The first
15 was on the 27th of June, 1986 and the doctor made a
16 general examination but didn't do an OB exam because
17 at that time there was a question of money and how
18 the pregnancy was to be paid for.

19 The mother went back to the doctor, the
20 OB-GYN doctor on the 8th day of August, 1986, at
21 which time the doctor did a complete OB exam in the
22 sense that he took the necessary lab tests from the
23 blood and the like. The OB exam was thorough and
24 complete.

25 As part of that OB exam there was a

1 determination, based upon the mother's recollection
2 of her last menstrual period, of the early part of
3 December, around the 8th or the 10th, or could be
4 later.

5 The doctor on the second visit under the
6 circumstances was uncertain as to the date of
7 confinement or the date of delivery and he therefore
8 recommended an ultrasound and encouraged the mother
9 to come back to the office for an ultrasound for
10 purposes of confirming the date, although there may
11 be some other medical benefits from the doctor's
12 point of view of the ultrasound at that stage of
13 pregnancy.

14 The doctor determined, based upon the two
15 evaluations, that there was no difficulty nor any
16 complication with this 18 year old in connection
17 with the pregnancy.

18 Now, Doctor, assume those facts to be
19 true, and I'd like to ask your opinion about certain
20 matters. First of all, Doctor, with respect to the
21 risk of the pregnancy, high or low, do you have an
22 opinion, based upon a reasonable degree of medical
23 certainty, as to what the risk of this pregnancy was
24 based on these facts?

25 A If a competent obstetrician examined her

1 thoroughly and found no complications, I would say
2 it's a low risk pregnancy.

3 Q Doctor, do you have an opinion -- I'm
4 going to use that term and just assume that every
5 time I use it that it's based upon a reasonable
6 degree of medical certainty, and ask, Doctor, if you
7 have an opinion as to whether this prospective
8 mother would be an appropriate candidate for home
9 delivery if she were to choose such?

10 A I would certainly think so since
11 everything seemed normal.

12 Q With reference to family support, would
13 you have an opinion as to whether that was adequate
14 for home delivery?

15 A I wish all my first pregnant patients had
16 grandmothers -- or mothers with that much
17 experience. If the grandmother has had four home
18 births and three hospital births and has attended
19 numerous other births, she obviously knows a good
20 deal about birthing and I think any girl would be
21 fortunate to have such a mother at her side.

22 Q Would that be helpful in the context of a
23 home delivery?

24 A Yes, it certainly would.

25 Q With reference to the date of delivery,

Tab E

IN THE FOURTH CIRCUIT COURT
IN AND FOR DAVIS COUNTY, LAYTON DEPARTMENT

STATE OF UTAH,

Plaintiff,

vs.

DAVID WARDEN,

Defendant.

) CIVIL NO. 871000415
)

) REPORTER'S TRANSCRIPT,
) VOLUME V
)

) FEBRUARY 26, 1988
)

) REPORTED BY:

) RENEE L. STACY, CSR, RPR
)

VOLUME V

COPY

BE IT REMEMBERED that commencing on February
22, 1988, through February 26, 1988, the
above-entitled matter came on for HEARING in the
Fourth Circuit Court in and for Davis County, Layton
Department, before the HONORABLE K. ROGER BEAN.

Representing the Plaintiff: MELVIN C. WILSON
BRIAN NAMBA

Representing the Defendant: DARWIN C. HANSEN

* * * *

STACY & ASSOCIATES
717 Boston Building

I N D E X

Witness

Mechelle Roundy

Direct Examination by Mr. Hansen	3
Cross Examination by Mr. Wilson.	11

Judy Jay

Direct Examination by Mr. Hansen	15
--	----

Mary Lou Warden

Direct Examination by Mr. Hansen	23
--	----

Scott Lloyd

Direct Examination by Mr. Hansen	26
Voir Dire Examination by Mr. Wilson.	30
Direct Examination (Continued) by Mr. Hansen	34
Cross Examination by Mr. Wilson.	62
Redirect Examination by Mr. Hansen	66

Allison Van Brocklin

Direct Examination by Mr. Hansen	67
--	----

Iris Auger

Direct Examination by Mr. Hansen	75
Cross Examination by Mr. Wilson.	83
Redirect Examination by Mr. Hansen	87

Mildred Lang

Direct Examination by Mr. Hansen	89
Cross Examination by Mr. Wilson.	93

Murice Young

Rebuttal Direct Examination by Mr. Wilson. .	99
--	----

Sharon Johnson

Rebuttal Direct Examination by Mr. Wilson. .	102
Rebuttal Cross Examination by Mr. Hansen . .	106

Ivy Young

Rebuttal Direct Examination by Mr. Wilson. .	110
Rebuttal Cross Examination by Mr. Hansen . .	121
Rebuttal Redirect Examination by Mr. Wilson.	138
Rebuttal Recross Examination by Mr. Hansen .	140
Rebuttal Re-redirect Examination by Mr. Wilson	142

1
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MARY LOU WARDEN

called as a witness and sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. HANSEN:

Q Mrs. Warden, for the record, ma'am, would you tell us your name?

A Mary Lou Warden.

Q Where do you reside?

A 625 South Grand Oaks, Fruit Heights.

Q And are you married?

A Yes.

Q To whom?

A To David Warden.

Q The defendant in this lawsuit?

A Yes.

Q I call your attention, Mrs. Warden, to Saturday morning, November the 8th, 1986. Do you recall that day?

A Yes, I do.

Q Did you receive or do you recall having received a telephone call at your home that morning asking for your husband, Dr. Warden?

A Yes.

Q In connection with that telephone call,

1 do you recall about what time it came in?

2 A It was 8:30.

3 Q And do you recall whether the voice was

4 male or female?

5 A It was a female voice.

6 Q Do you recall in connection with that

7 phone call any distinctive nature of the voice or --

8 A It was an accent.

9 Q What kind of an accent?

10 A Well, it was a European accent. Probably

11 English, but I'm not sure. I can't tell exactly.

12 Q Did the person with that voice identify

13 herself?

14 A No.

15 Q Do you remember what was said in the

16 call?

17 A Yes.

18 Q Would you tell us, please?

19 A The call came in and the voice asked, "Is

20 Dr. Warden there?" And I said, "No, he isn't," and

21 she said, "Thank you," and hung up.

22 Q Where was Dr. Warden at the time?

23 A Well, at the time he would have probably

24 been dressing and leaving the racquetball club on

25 his way home to work.

1 Q At least he wasn't at your home?

2 A No, he wasn't. I -- no, he wasn't there.

3 Q And what you say in terms of where he
4 probably was, is that normally what he does in the
5 morning?

6 A Yes.

7 Q Now, there has been testimony that he
8 delivered a baby the night before on the 7th of
9 November. Were you aware of that fact at 8:30 the
10 next morning?

11 A No.

12 Q Were you aware of the fact that a child
13 -- well, were you aware of the names of any of the
14 patients that he was treating obstetrically at that
15 point in time?

16 A No.

17 Q Did you have any knowledge that he was
18 treating a patient with a European or English
19 accent?

20 A No.

21 Q After you received the call, what did you
22 do?

23 A Well, I hung the phone up because I had
24 been asleep when the phone call came in and I just
25 -- I was sorry that the person had not given me

1 their name so that I could have helped them further,
2 but I didn't know what to do because I didn't know
3 their name and didn't know what they wanted.

4 MR. HANSEN: Okay. Thank you, Mrs.
5 Warden. That's all I have, your Honor.

6 THE COURT: Thank you. Mr. Wilson?

7 MR. WILSON: I have no questions, your
8 Honor.

9 THE COURT: You may step down, ma'am.

10 MR. HANSEN: Your Honor, we now wish to
11 call Scott Lloyd.

12 SCOTT LLOYD

13 called as a witness and sworn, was examined and
14 testified as follows:

15 DIRECT EXAMINATION

16 BY MR. HANSEN:

17 Q Mr. Lloyd, would you tell us your name,
18 sir?

19 A Scott Lloyd.

20 Q Where do you reside?

21 A In Kaysville.

22 Q Are you employed?

23 A Yes.

24 Q Where, sir?

25 A The LDS Hospital.

1 they moved in that they saw me on that, uh-huh.

2 Q Now, doctor -- pardon me. We've had a
3 lot of doctors on the witness stand. Bishop. Let
4 me call your attention, Bishop Lloyd, to the date of
5 Saturday, November the 8th, 1986 and let me
6 represent to you that Joanne's child was born the
7 preceding night on Friday, November the 7th, 1986.
8 During Saturday, that morning, did you receive any
9 notice of the fact that the child had been born?

10 A Yes, sir.

11 Q From whom?

12 A Ivy Young called me.

13 Q What time?

14 A About 8:00 in the morning.

15 Q And at that time do you recall what she
16 said to you?

17 A Oh, she just reported that the child had
18 been born and seemed sort of relieved that that was
19 done.

20 Q All right. Did she express any concern
21 to you for the child at 8 o'clock?

22 A No, I don't think so.

23 Q All right. Did you have further
24 telephone calls with her that day?

25 A I did.

1 Q When was the next one?

2 A Probably about 9:30 or 10:00 in the
3 morning.

4 Q Do you recall the conversation you had
5 with Mrs. Young at that hour?

6 A I don't recall the precise nature of that
7 conversation. She and I had probably at least three
8 phone conversations that morning.

9 Q Tell me what she told you in the second
10 one, as best you recall.

11 A Best I recall, she had some concern for
12 the baby's welfare that she probably didn't express
13 to me in the first conversation and had called to
14 visit with me about it. There was a heightening
15 level of concern with each subsequent phone call.

16 Q At 10 o'clock, what did she tell you
17 about her concern for the baby?

18 A I'm hard pressed to recall the exact
19 nature of each of those conversations. I know some
20 of what occurred during the course of those
21 conversations and what I do recall was that, as she
22 described the cause for her concern, she kept
23 referring to the difficulty in some breathing, some
24 gasping in the breathing.

25 Q Did she ever tell you the baby quit

1 breathing?

2 A Not that I recall.

3 Q Was the nature of the concern such that

4 you felt a need to immediately go over to the home?

5 A At what time?

6 Q Any of these phone calls.

7 A Well, in the first, probably the first

8 two phone calls, I didn't. By the final phone call

9 she was quite concerned and that heightened my

10 concern to the point where I went to visit the home.

11 Q First phone call comes at 8 o'clock?

12 A Uh-huh.

13 Q And she doesn't tell you anything about

14 the baby in terms of its well being?

15 A No.

16 Q Other than the fact that it's born?

17 A Yeah, essentially.

18 Q You get a second phone call at 9 o'clock

19 and she has some concern about the breathing of the

20 child but hasn't told you the child quit breathing

21 earlier in the day; is that correct?

22 A Not quite. I think the second call would

23 have been a little later than that. It was probably

24 more like 9:30 or 10:00.

25 Q I thought that's what I said.

1 A You said 9:00.

2 Q I meant to say 10 o'clock. I thought
3 that was your original testimony.

4 A It was, uh-huh.

5 Q And at that point in time, whatever the
6 report was that she gave to you was not sufficient
7 to cause you to go to the home?

8 A That's correct.

9 Q And after you received that report, you
10 then received the third report?

11 A That's correct.

12 Q And what time did the third report come?

13 A Probably 11:00 to 11:30.

14 Q All right. And at 11:00 to 11:30 when
15 that third report came, do you remember what was
16 said in terms of her concern for the baby?

17 A Not specifically. I know that there was
18 an escalating sense of urgency to the point by the
19 third called or by about 11:30 that morning I became
20 concerned enough to start calling other people to
21 try to resolve the well being of the baby.

22 Q And whom did you call?

23 A I attempted to call Dr. Warden and I
24 called others in my ward who I knew had a medical
25 background.

1 Q Whom did you call first?

2 A I don't recall.

3 Q With reference to others in the ward with
4 a medical background, describe the nature of their
5 medical background. I mean, what was -- in the
6 health care field, what was their function? Doctor,
7 nurse or what?

8 A Nurse.

9 Q They were nurses?

10 A (Witness nods.)

11 Q Not physicians?

12 A Correct.

13 Q Your first intent was to call a nurse?

14 A I don't recall whether I called Dr.
15 Warden first or called the nurses, but I called all
16 of them essentially at the same time, around 11:00
17 to 11:30.

18 Q But at that point in time, even at 11:00
19 or 11:30, you didn't go over to the home where the
20 baby was?

21 A I think I probably intended to, but I
22 wanted to have someone there that knew. I don't
23 have a medical background. I wanted someone there
24 with me to look at the problem.

25 Q Now, with reference to the nurses, were

1 you able to reach them, or do you recall?

2 A There are two nurses that lived in my
3 ward. As I recall, I know I got a hold of one
4 because she made a visit, and a second one I think I
5 was unable to get a hold of.

6 Q With reference to Dr. Warden, do you
7 remember that call?

8 A Yes.

9 Q Did you call his office?

10 A Yes.

11 Q Do you remember what time?

12 A Probably around 11 o'clock to 11:30 hour.

13 Q Do you remember whether you -- whom you
14 spoke to at the office?

15 A Whoever the receptionist was.

16 Q Do you remember what you said?

17 A Not real clearly. I think I probably
18 identified myself as concerned about Joanne Young's
19 baby and just asked if he could return my call.

20 Q All right. And was that call returned?

21 A Yes.

22 Q When was it returned?

23 A Probably about 2:30 or 3 o'clock that
24 afternoon.

25 Q All right. Doctor -- really I think I

1 get these titles mixed up. Bishop, after you
2 contacted Dr. Warden's office, then did you make any
3 other contact with other physicians?

4 A Yes, sir.

5 Q Whom did you contact?

6 A Doctor -- is it Hansen?

7 Q Kramer?

8 A Kramer.

9 Q Does that help?

10 A Thank you. Yeah.

11 Q Did Dr. Kramer live in your ward?

12 A No.

13 Q Did you call him at his office or his
14 home?

15 A Dr. Kramer lived in my stake and I called
16 him at his home.

17 Q Did you ever -- well, strike that.

18 What arrangements did you make with Dr.
19 Kramer?

20 A I asked if he would be willing to go down
21 and visit the Young home and I told him that I would
22 meet him there.

23 Q Did that occur?

24 A Yes, sir.

25 Q What time did you and he meet at the

1 Young home?

2 A Probably sometime between 11:30 and
3 12:00.

4 Q And do you recall the events that
5 occurred there after you met there?

6 A I do.

7 Q Tell us about that, sir.

8 A He and I arrived at the home at the same
9 time. We literally met on the doorstep and went
10 into the home. When we went into the home, Dr.
11 Kramer had a stethoscope. We went into the bedroom
12 where Joanne was holding the baby. He put the
13 stethoscope on the baby. He listened for a
14 heartbeat for a few moments. He got a pretty grave
15 look on his face and motioned me to go out of the
16 bedroom the with him.

17 He asked where the telephone was, said .
18 the baby was in very serious condition, that we
19 needed to take the baby to the hospital. He
20 proceeded to call an ambulance and then he asked me
21 if I knew how to perform artificial resuscitation.
22 I knew a little bit about that.

23 So we took the baby from Joanne's arms,
24 took the baby out to the couch and he and I
25 proceeded to perform artificial resuscitation for

1 THE COURT: It is leading. Sustained.

2 MR. HANSEN: All right. That's all I
3 have. Thank you, Allison.

4 THE COURT: The jury is instructed to
5 disregard the prior answer, objection being
6 sustained. Cross examination?

7 MR. WILSON: We have no questions, your
8 Honor.

9 THE COURT: Thank you. You may step
10 down.

11 MR. HANSEN: Your Honor, we'd like to
12 call Iris Auger, please.

13 DIRECT EXAMINATION

14 BY MR. HANSEN:

15 Q Mrs. Auger, for the record would you tell
16 us your name?

17 A Iris Auger.

18 Q Where do you live, ma'am?

19 A 526 East First South, Kaysville.

20 Q How long have you lived there?

21 A 18 years, 19 years.

22 Q Mrs. Auger, just relax. To be honest
23 with you, we're all kind of nervous in this
24 courtroom. You've lived there for a long time,
25 right?

1 A Yes. 19 years.

2 Q Do you know Maurice Allen and Ivy Young
3 and their family?

4 A Yes.

5 Q Do they live near where you live?

6 A Yes.

7 Q How far away?

8 A About two blocks.

9 Q Do you remember when they moved into the
10 neighborhood?

11 A Yes.

12 Q Did you become friends with them?

13 A Yes.

14 Q Were you and Ivy lady friends where you
15 talked and visited one another?

16 A Yes.

17 Q And borrowed cubes of butter from each
18 other once in a while?

19 A I don't know about cubes of butter, but
20 yes.

21 Q Mrs. Auger, did you become aware -- well,
22 let me ask you this. Were you aware of the fact
23 that the Youngs came from England originally?

24 A Yes.

25 Q Is there any common relationship from you

1 to her in that context?

2 A Yes. I was born in England.

3 Q When did you come to the United States?

4 A 22 years ago.

5 Q How many children do you have?

6 A I have four.

7 Q There came a time when one of the Young

8 children, Joanne, became pregnant. Were you aware

9 of that fact?

10 A Yes.

11 Q How did you become aware of the fact that

12 Joanne was going to have a baby?

13 A Ivy told me.

14 Q All right. Do you remember about when

15 that happened?

16 A Was after her first visit to Dr. Bitner.

17 Q Did you become aware of the fact that

18 they changed doctors and went to Dr. Warden?

19 A Yes.

20 Q Did you ever have occasion to talk to Ivy

21 about why that change was made?

22 A Yes.

23 Q Do you remember about when the

24 conversation occurred?

25 A Something like -- I think Joanne had made

1 two visits to Dr. Bitner, or one, I can't remember,
2 and they were discussing the cost, how much it would
3 actually cost them to go to Dr. Bitner and they
4 decided maybe they could do it cheaper and they said
5 they found Dr. Warden and that he would deliver the
6 baby at home.

7 Q Can you talk just a little bit louder so
8 the jury and at least the court and counsel can hear
9 you? Where did this conversation take place?

10 A Gosh, probably at Ivy's house.

11 Q The time came then when the baby was
12 born. Do you recall that?

13 A Yes.

14 Q Let me represent to you the baby was born
15 on the 7th of November, 1986, on Friday night.

16 A Yes.

17 Q When did you become aware of the fact
18 that the baby was born?

19 A Saturday morning.

20 Q How did you become aware of that?

21 A Ivy called me on the phone.

22 Q Do you know what time?

23 A It was about 8:30 in the morning.

24 Q And do you recall the conversation with
25 Ivy?

1 A Yes. She said they had a new grandson
2 and I asked how big it was and she said it was
3 really small, about four pounds, and so I said,
4 "Well, I think it needs to be in the hospital," and
5 she said, well, they were trying to locate the
6 doctor to come and check it. Something like that,
7 anyway.

8 Q Now, before we proceed further with the
9 events of that day, did you ever have an occasion to
10 talk with Ivy Young about the condition of the baby
11 that morning before the time she called you?

12 A Would you repeat the question, please?

13 Q Okay. I surely will. Was there a time
14 in the spring of 1987 when you had a conversation
15 with Ivy in connection with her telling you certain
16 things about the baby and the baby's breathing on
17 the morning that you received this phone call?

18 A No. She didn't say anything, other than
19 -- she said that the baby was a little blue and they
20 had put him on a heating pad and since he'd been on
21 the heating pad his color had come -- he was a lot
22 better in color.

23 Q Yeah. But did you talk with her in the
24 spring of '87 and did she tell you something then
25 about the breathing of the baby?

1 A Yes. When it was -- I think it was early
2 summer of '87 and she --

3 MR. WILSON: Counsel, could you establish
4 a little more foundation? I'm sorry, Mrs. Auger. I
5 just -- I'd like to know a little bit more about
6 when, where and what, on this conversation.

7 MR. HANSEN: I'll be happy to do that.

8 Q In connection with this conversation, I
9 think you've indicated it was in the spring of '87;
10 is that right, or sometime in --

11 A I think it was early summer.

12 Q And you had a conversation with Ivy?

13 A Yes.

14 Q Do you recall where the conversation
15 occurred?

16 A Yes. She called me on --

17 Q Now, before you tell me what was said, I
18 need to ask you some questions so that Mr. Wilson
19 has an understanding of the circumstances.

20 Do you remember, was the conversation
21 face to face or by telephone?

22 A By telephone.

23 Q Who called whom?

24 A Ivy called me.

25 Q Okay. And did she tell you the reason

1 she called you?

2 A Yes.

3 Q What was the reason she called you?

4 A She said she had been to see Attorney
5 Hansen and that she had given him my name and
6 address and phone number so I would probably get a
7 call from this attorney and she also said, same
8 conversation, that the baby had stopped breathing
9 the morning it was born, and I said, "But Ivy, you
10 didn't tell me that when you talked to me," and she
11 said, "Well, we got it going again and we got it
12 started again." I can't remember the exact words.

13 Q Did you go over to the Young home on the
14 morning of its birth?

15 A Yes.

16 Q How long were you there?

17 A I think I went three times.

18 Q Were you there when Dr. Kramer and Bishop
19 Lloyd came?

20 A I was leaving. They were in the driveway
21 and I was in the driveway.

22 Q And then you left at that time, I
23 understand.

24 A Yes. I had to take my neighbor boy to
25 karate.

1 Q But you were there three times that
2 morning?
3 A Yes.
4 Q Were you there again in the afternoon?
5 A Yes.
6 Q Did you have a conversation with Mrs.
7 Young that afternoon about the baby?
8 A Yes.
9 Q And hospitalizing the baby?
10 A Yes.
11 Q Where were you at their home when this
12 conversation occurred?
13 A Probably sitting on the couch.
14 Q Who was there with you?
15 A I remember Sharon was there and I think
16 her husband also was there.
17 Q Was there any conversation about the baby
18 and hospitalizing the baby?
19 A Yes.
20 Q Do you remember that conversation?
21 A It went something like maybe they should
22 have taken it to the Primary Children's because then
23 there would have been no cost involved. Maybe they
24 would have seen the baby free of charge. I don't
25 know. Something like that.

1 MR. HANSEN: That's all I have, your
2 Honor.

3 THE COURT: Thank you. Mr. Wilson?

4 CROSS EXAMINATION

5 BY MR. WILSON:

6 Q Mrs. Auger, it's true you're fairly close
7 friends with Ivy Young; is that correct?

8 A Yes.

9 Q And both of you -- and I guess,
10 understandably so, coming from England, you have
11 that association with each other; is that right?

12 A Yes.

13 Q I'm just going to ask you a few
14 questions. You indicated in that initial phone call
15 that came to you about 8:30 in the morning of the
16 8th Ivy told you that the baby was four pounds in
17 weight; is that correct?

18 A That's correct. She said it was small,
19 about four pounds.

20 Q Small, about four pounds. And then she
21 indicated some blueness but they put the heating pad
22 on the baby and the baby had colored up?

23 A Yes.

24 Q When was the first time that you went
25 over to the home that morning?

1 the fact that Joanne was somewhat embarrassed about
2 maybe having a hospital birth as far as that was
3 concerned?

4 A I don't recall. She was embarrassed, but
5 I don't recall.

6 Q All right. Did you ever talk to Joanne
7 about that decision?

8 A No.

9 Q So you never had any conversations with
10 her relative to --

11 A Not with Joanne, no.

12 Q Just with Ivy?

13 A Right.

14 MR. WILSON: I have no further questions,
15 your Honor.

16 THE COURT: Thank you. Further direct?

17 MR. HANSEN: Yes, briefly.

18 REDIRECT EXAMINATION

19 BY MR. HANSEN:

20 Q While you were over there that morning
21 around the baby, did you ever again mention to Mrs.
22 Young that this baby ought to be in the hospital?

23 A Yes, I did. I said it should go to the
24 hospital because it was so small.

25 Q What was her response?

1 A She said she was trying to get the doctor
2 to come.

3 MR. HANSEN: Okay. That's all I have.
4 Thank you.

5 THE COURT: Any further questions?

6 MR. WILSON: No further questions.

7 THE COURT: Thank you. You may step
8 down.

9 MR. HANSEN: Your Honor, we would like to
10 call Mildred Lang.

11 THE COURT: Mr. Hansen, it would be
12 appropriate to take a recess, the court feels, and
13 so, before this witness, that's what we ought to do.

14 Members of the jury, I give you the same
15 instruction. Please don't let anyone talk to you
16 about the subject matter of the case. Please don't
17 discuss it among yourselves or make up your minds
18 about it, don't be in the company with anyone that
19 is or may be connected with the case.

20 We'll take a 15 minute recess.

21 THE BAILIFF: Court will be in recess.

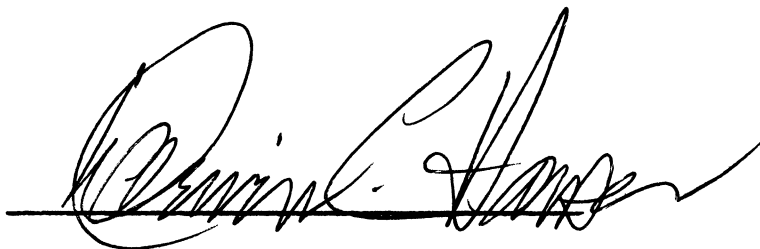
22 (Recess.)

23 THE COURT: We're returning to session in
24 file 871000415, State of Utah against David Warden.
25 All of the members of the jury have returned to the

CERTIFICATE OF SERVICE

This is to certify that on the 30 of March, 1989, true and correct copies of the foregoing Addendum to Brief of Appellant were mailed, first class postage prepaid thereon, to the following:

Melvin C. Wilson
Brian Namba
Davis County Attorney Office
County Courthouse
Farmington, Utah 84010

A handwritten signature in black ink, appearing to read "Brian Namba", is written over a horizontal line.